

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 8 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/BW/CV/180/2020

BETWEEN:

MR. CALLISTUS CHUKWU APPLICANT

AND

1. RETIRED WING COMMANDER: EMMANUEL AJENU
2. IJACHI ADAMS
3. NIGERIA ARMY
4. NIGERIA NAVY RESPONDENTS

JUDGMENT

DELIVERED ON 21ST OCTOBER, 2021

On the 22nd July, 2020 the Applicant filed a proceeding under the Fundamental Right Enforcement Procedure Rules against the Respondents for the Enforcement of his Fundamental Rights. On the face of the originating motion the Applicant claims against the Respondents as follows:-

1. A Declaration that the arrest and detention of the Applicant and his workers, further torture beating up and deHumanization of the Applicant and its workers on 24th July 2020 for more than 8 hours by the 1st and 2nd Respondents, joint masked officers and officers of 3rd and 4th Respondents on the below mentioned plot of

land on an issue as to ownership of both plot M 147 and M149 of 2200sqm in Kubwa extension 111 FCDA Scheme -FCT between the Applicant and 1st Respondent Is unlawful, unconstitutional and a violation of the Applicant's Fundamental Right as guaranteed by Sections 37, 36, 34, 35, 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

2. A Declaration that the wanton destruction of the Applicant built up bakery and other further destructions at the Applicant plot of land with all the destruction done at Applicants land and valued at more than Million Naira by the 1st and 2nd Respondents, joint masked officers and officers of 3rd and 4th Respondents on the below mentioned plot of land on an issue as to ownership of both plot m 147 and m149 of 2200sqm in Kubwa extension 111 FCDA Scheme-FCT between the Applicant and 1st Respondent on 16th June, 20th and 24th July 2020, is unlawful, unconstitutional and a violation of the Applicant's Fundamental Right as guaranteed by Sections 36, 34, 35,37,44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

3. A Declaration that the wanton destruction, demolition of the Applicant plot of land, removing its gates and destruction of every other facilities on this land, and other retention of the Applicant worker phones at the Applicant plot of land with all the destruction done at Applicants land damaged and valued at 100 Million Naira by the 1st and 2nd Respondents, joint masked officers and officers of 3rd and 4th Respondents on the below mentioned plot of land

without the above described Respondents not making recourse to Section 47, 50, 60, 61 of Nigeria urban and regional planning act, LFN and the absence of the Abuja (department of development control) known as AMMC: not carrying out the demolition exercise on the above plot of land is unlawful, unconstitutional and a violation of the Applicant's Fundamental Right as guaranteed by Sections 36, 34, 35,43,44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

4. A Declaration that the forceful, illegal, and brute takeover of the Applicant plot of land by the 1st Respondent, joint masked officers and officers of 3rd and 4th Respondents without any court order of any kind on the below mentioned plot of land on an issue as to ownership of both plot m 147 and m149 of 2200sqm in Kubwa Extension 111 FCDA Scheme -FCT between the Applicant and 1st Respondent finally on 24th July 2020 is unlawful, unconstitutional and a violation of the Applicant's Fundamental Right as guaranteed by Sections 36, 34, 35,44,43,37 of the constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

5. Exemplary and punitive damages against the 1st – 3rd, and 4th Respondents.

6. The sum of N100, 000000.00k (One Hundred Million Naira Only) being general damages against the Respondents for the infraction of the Human Right of-the Applicant, its property and dehumanization of Applicant workers as stated above.

7. An order of injunctive relief restraining all the Respondents, their agents and whatsoever persons connected with them from taking further unconstitutional steps, arresting, further dehumanizing the Applicant and his workers in this regard in relation to the ownership of the above mentioned property.

8. An order prohibiting any other reckless/illegal steps which might be taken by the Respondents against the Applicants and further order of mandatory injunction reinstating the Applicant to its property known as plot M147 and M149 of 2200sqm in Kubwa extension 111 FCDA Scheme -FCT as a consequential relief at the conclusion of this suit.

9. A Declaration that the forceful, illegal, compulsory takeover of Applicant property without payment of any kind of compensation as stated by Section 44 of constitution of Federal Republic of Nigeria (CFRN 2011) and brute takeover of the Applicant plot of land by the 1st Respondent joint masked officers and officers of 3rd and 4th Respondents without any court order of any kind on the below mentioned plot of land on an issue as to ownership of both plot M147 and M149 of 2200sqm in Kubwa Extension 111 FCDA Scheme-FCT between the Applicant and 1st Respondent finally on 24th July 2020 is unlawful.

10. And for such order or other orders that this honourable court may deem fit to make in the circumstances.

In support of this application, the Applicant filed a two paragraph affidavit as well as a statement of facts and grounds for the

application; the Applicant also filed a written address, attached to the affidavit are two exhibits.

The parties were served with the Applicant's application. Upon being served, the 1st and 2nd Respondents filed a counter affidavit with the leave of the court, of twenty two paragraphs, annexed to the said counter affidavit are exhibits A to E. The 3rd and 4th Respondents did not file any process. It must be said straight away that the 3rd Respondent was represented in court all through when this matter came up. Even on the date when argument was taken and the suit was reserved for judgment.

The Applicant also filed a further affidavit disputing the facts deposed to by the 1st and 2nd Respondents. He equally filed another further affidavit it on 19th November, 2020 also disputing the facts deposed to by the 3rd Respondent. Though I have search through the file, I could not find the said counter affidavit of the 3rd Respondent to which the Applicant filed the further and better affidavit of 19th November, 2020.

When the case came up on 26th January, 2021 counsel for the 1st and 2nd Respondents in court could not go on with the matter because the learned counsel whom he holds his brief was berief. The court invoke order 7 rule 53 of the Fundamental Rights Enforcement Rules to deemed the filed processes as adopted by counsel.

On 17th February, 2021 the counsel for the 1st and 2nd Respondents adumbrated his submission.

Counsel for the Applicant though did not adopt his written addresses but urge the court to hold that the 3rd Respondent who did not file any single paper has admitted the Applicants claim.

I have carefully read all the processes filed in this case by the parties. The application before the court is for the Enforcement of the Applicant's Fundamental Rights against the Respondents. The principal reliefs herein as I said earlier are declaratory reliefs.

The onus in such claim is on the claimant to prove even where the other parties did not file a response or defence to his claim. See the case of U. B. A PLC V. B. T. L Industry LTD (2006) 19 NWLR (Pt. 1013) Pg. 61 at 139.

In the instant case, even where the 3rd and 4th Respondents did not file any process in counter to the Applicants claim the onus of prove still resides with the Applicants. This is because generally the burden of prove is on the plaintiff to show that is entitle to the reliefs sought. See the case of U. B. A. PLC V. B.T.L. Ind. LTD (2006) 19 NWLR (Pt. 1013) Pg. 61 at 139.

Section 46 of the 1999 constitution provide as follows:-

“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.”

There are three circumstances envisage in this provision. The first limb of the Section envisages a situation where the Fundamental Rights has been violated. the second limb anticipate a situation where the violation is ongoing but has not been completed. In essence the process of the violation of the Right is ongoing. The third limb is anticipatory. It relates to a situation where the Right is feared to be violated any moment. In this case, the Applicant must be proactive to forestall the infringement from occurring. See the case of F.R.N V. Ifegwu (2003) FWLR (Pt. 167) Pg. 703 at 778. In the instant case, the Applicant has alleged that his Fundamental Rights has been violated by the Respondents in that the Respondents, after demolishing his property on his land at Kubwa proceeded to arrest, humiliate, beat and tortured brutally the Applicants and his workers on 24th July, 2020. He allegedly made a complaint to the police in writing vide exhibit “AA”. unfortunately, I have stressed and strained to read the exhibit “AA”, the first page thereto, which I perceived to be the said complaint. Unfortunately, the said page is not legible and cannot be read. It must be stressed here that where a party intends the court to rely on a document in reaching a decision in his favour such a party per obligation should furnish the court with such document and endeavour to ensure that the said document is in a state where the court can read and use it in reaching its decision.

However where such a document is not legible, and cannot be read, the court will have nothing to do with it.

The allegation of brutalisation humiliation, torture and beating of the Applicant if proved is a clear violation of the Applicant's Fundamental Rights as enshrine and guaranteed in part IV of the 1999 Constitution as amended.

As I said earlier, it is the Applicant who must prove these said violation. It is not enough to merely allege the violation of the Fundamental Right. The Applicant must go further to show in what ways the violation, took place. In the instant case, the Respondents denied the allegation of the Applicants from the facts of the case as presented to the court by the parties, it seems to me and there is no doubt that the Applicant and the 1st Respondent are locked in a dispute over the claims of two plots of lands situate at Plot M147 and M149 Measuring 2200 Square Meters at Kubwa Extension III FCDA Scheme. There is no doubt from the facts of the case that the 1st Respondent with the active participation of the 2nd, 3rd and 4th Respondents demolished properties therein belonging to the Applicant. It is also not in doubt that the parties are disputing the ownership of the said land. The issue before this court to my mind to be determine has nothing to do with the claim of title as Fundamental Right Enforcement proceeding are sui generis and cannot be use to determine the claim of title to land.

It can only be use for the Enforcement of the violation or threaten violation of the Fundamental Rights. See the case of WAEC V. Akinkumi (2008) 36 WRN Pg. 29. At best the claim for the demolition and trespass are in the realm of tort or tortuous liability and cannot be commence with Fundamental Right Enforcement proceeding.

As i said earlier in this judgment, the claims of the Applicants for brutalization, torture and dehumanization must be prove for him to be entitle to judgment. The Applicant could not upload before this court any pictures depicting the act of violation of his Fundamental Right. It must be noted that the earlier opportunity the Applicant furnished the court with pictures of the demolition that took place on his land. One wonders if he could take such pictures without been molested while he couldn't also take a picture of the alleged brutalization, beating and torture that took place as allege by him at the site of the demolition.

Again from the date of the action which is allege to be variously on 20th and 24th of July, to the date of hearing this matter, the Applicant did not bring evidence depicting any bodily injury or medical report showing a condition in his health resulting from the beating and brutalization. Again from the facts deposed to in the affidavit by the Applicant, he was not the only person present at the time of the brutalization, beating and tortured nor was he the only one who was allegedly tortured, dehumanize and brutalize.

According to him, his workers were also giving the same treatment. However, it is curious that none of the said person who suffers the same fate alongside the Applicant deposes to any affidavit to that effect in support of the allegation before this court. I am of the firm view that the Applicant has not proved his claim of the violation of the Fundamental Rights by the Respondents.

They were IPSA deposed by the Applicant in an affidavit of the said violation without more is not enough? I do not have a doubt in my mind that the Applicant may have a claim against the Respondents in tort for trespass and damages for demolition of his properties.

But this cannot translate by any stretch of the imagination to the violation of his Fundamental Right capable of being enforced by means of the Fundamental Right Enforcement Procedure. The Applicant's claim against the Respondents lacks merit, and ought to be dismissed and it is hereby dismissed. That is the judgment of the court.

APPEARANCE:

Ihensekhien Samuel Jnr., Esq. for the Applicant

I. O. Shuaibu, Esq. for the 1st Respondent

Sadiq Enechi Nwabueze, Esq. for the 3rd Respondent

The 4th Respondent not in court

Sign
Hon. Judge
21/10/2021