

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
BEFORE HIS LORDSHIP HON. JUSTICE J.E OBANOR
HOLDEN AT JABI

COURT NUMBER : HIGH COURT NO. 29
CASE NUMBER : SUIT NO: CV/3262/2020
DATE: : 9TH DECEMBER 2021

BETWEEN:

BAKIR JABIR APPLICANT

AND

INSPECTOR GENERAL OF POLICE..... RESPONDENT

JUDGMENT

The Applicant approach this Honourable Court for enforcement of his fundamental human right Pursuant to Sections 34, 35, 36 and 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and sought for the following reliefs;

1. Declaration that the arrest and continued detention of the Applicant from the 22nd July, 2019 to 27th November, 2019 by the Respondent its privies, agents, officers, or representatives is illegal, unlawful, null and void and amounts to gross violation of his fundamental rights as enshrined in Sections 34, 35, 36 and 40 of the

1999 Constitution of Federal Republic of Nigeria (as amended).

2. An Order of this Honourable Court directing the Respondent to pay the Applicant the sum of N1,000,000 (One Million Naira) for unlawful detention.
3. 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.
4. 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.

In support of the application is an affidavit of 10 paragraphs duly deposed to by One Nurudeen Musa Umar a brother to the Applicant.

It is deposition of the Applicant as distilled from the affidavit in support of the Motion is that the Applicant was arrested on 22nd July, 2019 by agents of the Respondent and taken to special Anti-Robbery Squad (SARS) cell.

That the Applicant does not have any criminal record and that he is a student.

It is further the affidavit of the Applicant in his originating writ that the Applicant took ill while in detention and was denied medical attention.

In line with law and procedure, the grounds upon which the application was brought and the statement

in line with fundamental Human Rights Rules was filed.

A written address was filed wherein two issues were formulated for determination to wit;

- 1. Whether the arrest and continuous detention of the Applicant from the 22nd July, 2019 to 27th November, 2019 by the Respondent its privies, agents, officers or representatives does not amount to breach of the Applicant's Fundamental Right as enshrined in Sections 34, 35, 36 and 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).*
- 2. Whether the Applicant is entitled to the reliefs sought.*

On issue one, *Whether the arrest and continuous detention of the Applicant from the 22nd July, 2019*

to 27th November, 2019 by the Respondent its privies, agents, officers or representatives does not amount to breach of the Applicant's Fundamental Right as enshrined in Sections 34, 35, 36 and 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Counsel submits that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in accordance with a procedure permitted by law.

NKPA VS. NKUME (2001) 6 NWLR (Pt. 710) 543 was cited by Counsel.

Learned counsel contended that the arrest and detention of the Applicant as set out in the affidavit is contrary to the Provisions of Section 35(1) of the

1999 Constitution of the Federal Republic of Nigeria
(as amended).

On issue two, *whether the Applicant is entitled to the reliefs sought.*

It is the submission of the learned counsel that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.

IGWE VS. EZEANUCHIE (2010) 7 NWLR (Pt. 1192) 61 was cited by learned counsel.

Counsel argued that from the facts contained in the affidavit in support of the originating motion, the Applicant has established that he has been unjustly denied his Fundamental Right.

Court was urged to grant the reliefs sought by the Applicant.

The Respondent upon service, filed a counter affidavit of 7 paragraphs duly depose to by Taiwo Anifowose, a Litigation Manager in the law firm of the Respondent.

It is the counter affidavit of the Respondent that the Applicant and 59 others were arrested on 22nd July, 2019 for attacking and brutally killing DCP Usman K. Umar, DCP Operation FCT Police Command; Mr. Precious Owolabi, a member of National Youth Service Corps attached to Channels Television and wounding many other people at Eagles Square Abuja.

That the Applicant and his-co-Shiite Members also burnt down the National Emergency Management

Agency (NEMA) rescue post, Operational/Vehicles and drugs loaded therein during their violent protest on 22nd July, 2019. And that the Applicant and 59 others were charged before FCT High Court vide Exhibit “NPF1” annexed to the affidavit.

The Respondent avers that the trial of the Applicant and 59 others has commenced and six witnesses have testified already.

That the Applicant came all the way from Gombe State and joined others to armed with dangerous weapons, to stage violent protest and killed two persons mention earlier in the affidavit.

That the Applicant applied for bail before FCT Court in his trial vide Exhibit “NPF4”. And that the Islamic Movement of Nigerian which Applicant is a member has been proscribed vide Exhibit “NPF3”.

Respondent stated that the Right of the Applicant has not in any way been infringed upon.

A written address was filed wherein three issues were formulated for determination to wit;

- 1. Whether the Applicant's right to personal liberty, dignity of human person, fair hearing and peaceful Assembly as guaranteed by the 1999 Constitution of Nigeria (as amended) had been breached or threatened by the action of the Respondent.*
- 2. Whether taking into consideration all the facts of this case, the Respondent acted within the law.*
- 3. Whether the Applicant is entitled to the relief sought.*

On issue one, *Whether the Applicant's right to personal liberty, dignity of human person, fair hearing and peaceful Assembly as guaranteed by the 1999 Constitution of Nigeria (as amended) had been breached or threatened by the action of the Respondent.*

It is the submission of the Respondent that none of the Fundamental Rights of the Applicant has been violated as the Applicant was arrested on allegation of criminal offences of criminal conspiracy; culpable homicide punishable with death; attempted culpable homicide, mischief by fire and the Applicant is already standing trial.

Counsel submits that Section 35(7a) provide an exception to the effect that nothing shall be construed in relation to sub-section 4 as applying in

the case of a person arrested or detained upon reasonable suspicious of having committed a capital offence.

A.G ANAMBRA STATE VS. UBA (2005) 15 NWLR Part 947 Page 44 at Page 67 Para – F.

On issue two, *Whether taking into consideration all the facts of this case, the Respondent acted within the law.*

Counsel submits that by virtue of Section 4 of the Police Act, the Respondent is empowered to protect life and property, prevent and detect crime, apprehend offenders, among others ***DR. ONAGORUWA VS. INSPECTOR GENERAL OF POLICE (1991) 5 NWLR PART 575 PAGE 593 PARA 4.***

On issue three, *Whether the Applicant is entitled to the relief sought.*

Learned counsel submit that, all the claims of the Applicant are mere assertion without any supporting evidence for instance, the Applicant claimed he is a student but did not exhibit any admission letter to prove that fact and the allegation that he took ill while in detention was equally not prove.

Court was finally urged to dismiss the Applicant's case for liken in merit.

Upon service the Applicant file a further and better affidavit of 7 paragraphs wherein the Applicant stated that the protest was peaceful and that the Applicant had no weapon and did not kill Precious Owolabi, DCP Usman K. Umar or any other person.

That the Applicant does not belong to any proscribed organisation as the alleged proscription of Shiites was done after the arrest of the Applicant.

A written address was filed wherein Applicant argued that any breach of the provision of the Fundamental Right Provisions renders the act subsequent to that breach a nullity.

ADIGUN VS. ATTORNEY – GENERAL OYO STATE (1987) 1 NWLR (Pt. 53) 678.

Counsel submits that the Courts guard Fundamental Rights provisions very jealousy. And any law or action that perpetrated against the provisions of the Fundamental Rights of any individual which is against the spirit of the Constitution would not be allowed to stand.

***ONYEMEH VS. EGBUCHULAN (1996) LPLER
(2739) 1 at 21.***

Court was finally urged to grant all the reliefs sought by the Applicant.

I have gone through the case of the Applicant as aptly captured in the affidavit of the Applicant deposed to by his brother. I have equally gone through the counter affidavit of the Respondent and the further and better affidavit of the Applicant. I shall be brief but succinctly in addressing the issue therein for the interest of justice.

Be it known that it is the constitutional duty of court to develop the common law, and to so do that within the matrix of the objective and normative value suggest by the constitution and with due regard to the spirit, purport and object of the bill of rights.

It is equally the legal duty of police to protect citizen through law and structures designed to afford such protection. There is the need for the police to have regard to the constitutional provision and bindingness of Bill of Rights on the state and its structures.

Permit me to observe that detention, no matter how short, can amount to breach of Fundamental Human Right. But that can only be so if the detention is adjudged wrongful or unlawful in the first place.., that is if there is no legal foundation to base the arrest and or detention of the Applicant.

Where there is basis, the detention must be done in compliance with the provisions of law and in line with civilized standard known to modern society.

Procedurally speaking, application for enforcement of Fundamental Human Right is made by way of

motion on notice stating grounds and affidavit in support which serves as evidence.

It is the evidence of Applicant as distilled from his affidavit that the Applicant was arrested and detained in Cell without recourse to his fundamental rights as enshrined in the constitution. The allegation the Respondent vehemently denied vide its counter affidavit.

It is the averments of the respondent that the Applicant was arrested in connection with his role in violent protest and killing of two persons and that the applicant is facing trial before a Court of competent jurisdiction vide Exhibit NPF1.

It remains trite that facts deposed to in affidavit that are not challenged are deemed admitted and acted

upon by the court. See *MADU VS THE STATE (2011) LPELR 3973*.

Once a party has averred to facts in an affidavit, it behoves on the adverse party to contradict those facts in a counter affidavit if they do not represent the true position. The exception to this general rule however is where averments in the affidavit in support of an application are contradicting or if taken together are not sufficient to sustain the Applicant's prayers, then a counter affidavit is most unnecessary. See *CHIJOKE AGU VS OKPOKP (2009) LPELR 8280 (CA)* See *ORUNLOLA VS ADEOYE (1996) NWLR (pt. 401)*

The averment deposed to by the Respondent and the facts contained in Exhibit "NPF1" i.e the charge before my learned brother Hon. Justice Belgore,

remained unchallenged and therefore Court must act upon same.

It is instructive to state here that, the Applicant made a blanket assertion in his affidavit that he is a student and that he took ill while in Police cell. No evidence was attached to buttress this assertion.

The Court of law must not act on speculation.

It is true that the police have a duty to protect life and property and to detect crime. All these must be done within the confines of the law establishing the police and the constitution of Federal Republic of Nigeria 1999 as amended and under the Police Act section 4 of the police Act provides thus:

“The police shall be employed for the prevention and detention of crime, the apprehension of law and order, the protection of

life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.”

It truly therefore, means that when a suspect is arrested on a reasonable suspicion to have committed a crime, he shall be treated within the confines of the law.

Question... Has the Applicant in view, been treated within the provision of law?

Poser ... Has his liberty been curtailed? For the purpose of clarity, I shall re-produce relevant portion of 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 procedure permitted by law:-

a) “For the purpose of bringing him before a court in suspicion of him having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.”

Section 35(1) of the constitution of Federal Republic of Nigeria 1999 as amended specifically provides that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not be kept in such detention for a period longer than the maximum period of imprisonment presumed for the offence.

See 35(4) which also provides that any person who is arrested or detained in accordance with (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 two months from the date of his arrest or detention in the case of a person who is in custody or entitle to bail, or 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 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.

The expression of reasonable time under sub (4) of the constitution means one day where there is court of competent jurisdiction within a radius of 40 Kilometers, or two days or such longer period as the circumstances may be considered by the court to be reasonable.

It is certainly not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

A wrongdoer is often a man who has left something undone, not always one who has done something...

Ignorance of law excuses no man, not that all men know the law, but because it is an excuse everyman will plead, and no man can tell how to refute him.

The procedure for the enforcement of Fundamental Human Right certainly is not an outlet for fraudsters to claim innocence and seek protection after committing crime. It is a procedure opened to frank and upright people whose inalienable rights would have been or about to be infringed upon by the very

people who have the power to protect such rights or other persons who wield other unauthorized powers.

Applicant in the application in view, has stated in his affidavit in support that he was innocent of all allegation against him.

Indeed even the devil does not know human mind, for the heart of man is desperately wicked.

It is instructive to state here again that, the Applicant is facing trial before my learned brother Hon. Justice Belgore on count bothering on culpable homicide, violent protest and arson. It is only my brother that can determine the innocent of the Applicant and not in this Court.

I must observe here that, by Exhibit “NPF1”, the Police are in compliance with relevant laws by

arraigning the Applicant before a competent court of law.

From the above affidavit evidence which have remained unchallenged and or contradicted, it is my Judgment that the Respondent has indeed satisfied the requirement of the law and therefore, Applicant Fundamental Human Right to liberty, dignity of human person has not been violated.

I shall therefore, dismiss this action for lacking in merit.

Consequently, **Suit No. CV/1539/2019** is hereby dismissed.

SIGNED
Justice J.E Obanor
(Hon. Judge)