

**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/055/2021**

**DATE: : 9<sup>TH</sup> DECEMBER 2021**

**BETWEEN:**

**HAUWA ADAMU ..... APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE..... RESPONDENT**

# **JUDGMENT**

The Applicant vide originating motion for the enforcement of her fundamental Human Right approached this Hon court and sought for the following Reliefs:

- a. A Declaration that the arrest and continued detention of the Applicant from the 22<sup>nd</sup> July, 2019 to 27<sup>th</sup> November, 2019 by the Respondent its privies, agents, officers or representatives is illegal, unlawful, null, and void and amounts to gross violation of her fundamental Human Rights as enshrined in Sections 34, 35, 36, and 40 of the 1999 constitution of the Federal Republic of Nigeria (as amended).
- b. An Order of this Honourable Court directing the Respondent to pay the Applicant the sum of

N1,000,000 (One Million Naira) only 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.

In line with law and procedure, the grounds upon which the application was brought and statement pursuant to fundamental enforcement rules was filed.

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 the deposition of the Applicant that he was arrested on the 22<sup>nd</sup> July, 2019 by the agents of the Respondent on her way to Federal Secretariat, Abuja to protest against the continued detention of Sheikh Ibraheem Zakzaky and was taken to special Anti-Robbery Squad (SARS) cell.

That no reason was given for her arrest until 27<sup>th</sup> November, 2019 when the Application was charged before the FCT High Court.

It is further the deposition of the Deponent that the Applicant does not have any criminal record and that she is a student.

That the Applicant took ill while in detention and was denied medical attention.

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 22<sup>nd</sup> July, 2019 to 27<sup>th</sup> November, 2019 by the Respondent, its privies, agents, officers or representatives does not amount to breach of the Applicant's Fundamental Rights as enshrined in Section 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 22<sup>nd</sup> July, 2019*

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

Learned counsel submits that every person resident in Nigeria has a right to go about his or her lawful business unmolested or unhampered by anyone else be it government functionary or private individual.

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

Counsel submits further 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.*

Learned counsel submit that the Applicant has established violation of her fundamental rights as enshrined in Sections 34, 35, 36 and 40 of the 1999 Constitution of Federal Republic of Nigeria.

Counsel maintained that it is the duty of the Court to grant redress to any person who has successfully proved that any of his fundamental rights has been, is being or is likely to be contravened or infringed.

*IGWE VS. EZEANOCHIE (2010) 7 NWLR (Pt. 1192) 61* was cited by Counsel.

Court was finally urged to grant the reliefs sought.

The Respondent upon services, file a counter affidavit of 18 paragraphs deposed to by one Ruth Damali, a litigation secretary in the law firm of the Respondent's counsel.

It is the deposition of the Respondent that the Applicant and 59 others were arrested for attacking and brutally killing of DCP Usman K. Umar, DCP Operation FCT Police Command, Precious Owolabi, a member of National Youth Service Corps attached to Channels Television, and wounded several others people at Eagle Square Abuja on the 28<sup>th</sup> October, 2019.

That the Applicant and 59 others were charged to court upon conclusion of investigation vide Exhibit "KWO1". And that the trial of the Applicant and 59 others has since commenced at FCT High Court 16,



Apo before Hon. Justice Suleiman B. Belgore and six witnesses testified already.

Respondent avers that a person arrested on allegation of having committed a capital offence can be detained for more than forty-eight (48) hours to properly conduct investigation into the allegation before charging him to Court.

That the Applicant made confessional statements admitting being a member of the proscribed Islamic Movement of Nigeria and equally admitted in her statement to have participated in the violent protest that lead to the death of many people including Deputy Commissioner of Police Usman K. Umar in Abuja.

Respondent stated that the Applicant has applied for his bail before the High Court of FCT vide Exhibit “KWO4”.

That the Applicant came from Katsina State to participate in the violence protest. And that this application is an abuse of Court process.

In line with law, a written address was filed wherein, three issues were formulated for determination by the Respondent 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 has been breach or threatened by the action of the Respondent.*

2. *Whether taking into consideration all the facts of the 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 has been breach or threatened by the action of the Respondent.*

Learned counsel submits that the Respondent is empowered to arrest and detained any person for the purpose of bringing him before a Court in execution of the Order of a Court or upon reasonable suspicious and that the reason for arrest of the

Applicant is clear from the counter affidavit file by the Respondent.

Counsel submits that the Fundamental Right as provided in the Constitution is qualified and not absolute. Section 35(40) of the 1999 Constitution was cited and relied upon.

Counsel maintained that inference of arrest and detention is not sufficient in action for enforcement of fundamental rights.

***EZEADUKWA VS. MADUKA (1997) 8 NWLR Part 578 Page 635 Ratio 7*** was cited by the Respondent.

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

Counsel submits that the duty of Police is to detect crime and that the Applicant was arrested on reasonable suspicious of committed crime and she is standing trial and therefore Court should discountenance the argument of the Applicant.

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

Learned counsel submits that all the claims of the Applicant are mere assertion without any supporting evidence. And that Court of law cannot by an Order restrain the Police on carrying out its Constitutional duty.

***A.G ANAMBRA STATE VS. UBA (2005) 6 NWLR Pt. 947.***

Upon service, the Applicant filed a further and better affidavit wherein Applicant avers that it was

peaceful protest and that the Applicant did not carry any weapon.

That the Applicant was not informed of her offence and that the Islamic Movement of Nigeria was not proscribed.

A written address was filed wherein, learned counsel submits that the Court guard fundamental rights provisions very jealously and that any action that is perpetrated against the provisions of the Fundamental rights of any individual must be sanctioned.

***ONYEMEH VS. EGBUCHULAM (1996) LPELR (2739) 1 at 21.***

Counsel urge the Court to grant all the reliefs sought in 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 the affidavit of Nurudeen Musa Umar that the Applicant was arrested, detained in Abuja under dehumanizing situation since 22<sup>nd</sup> July, 2019 to 27<sup>th</sup> November, 2019 on the allegation which the Applicants are innocent of.

It is further the evidence of Applicant that she was denied access to medication when she took ill.



It is the deposition of the Respondent that the Applicant and 59 others were arrested for attacking and brutally killing of DCP Usman K. Umar, DCP Operation FCT Police Command, Precious Owolabi, a member of National Youth Service Corps attached to Channels Television, and wounded several others people at Eagle Square Abuja on the 28<sup>th</sup> October, 2019.

Respondent stated that investigation was concluded and Applicant is presently standing trial before a Court of competent jurisdiction.

There is no gain saying that it is the duty of the police among other duties, to protect lives and property and to also defect crime. I however must be quick to mention that such exercise of duty shall be done in obedience to the provisions of our laws, i.e

the Constitution of the FRN 1999 and the Police Act.

Section 4 of the Police Act then comes handy at this juncture.. the said section has this to say:-

*“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.

Treatment within the province of the law entails granting him administrative Bail where necessary or arraigning him in court where investigation is concluded within the regulation period as provided under the law.

Section 35(1) of the Constitution of FRN states that 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 execution of the order of court or upon reasonable 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.

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 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.

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.

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 suspects 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.

It is instructive to state here that, the Fundamental Right as provided in the Constitution is qualified and not absolute. See Section 35(40) of the 1999 Constitution.

Indeed, inference of arrest and detention is not sufficient in action for enforcement of fundamental rights.

See the case of *EZEADUKWA VS. MADUKA (1997) 8 NWLR Part 578 Page 635 Ratio 7.*

Applicant in the application in view, have stated in her affidavit in support that she is innocent of all allegation against her.

A closer look at and consideration of the Respondent's counter affidavit says a lot.

The Court shall not grant protection to people to shield them from Prosecution, even though such investigation shall be done within the confirm of the law as I stated earlier.. now that Respondent have exhibited charge before my brother Court, it is

obvious that the Respondent is in compliance with the law.

I shall therefore dismiss this action for lack of merit.

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

***SIGNED***

***Justice J.E Obanor***

***(Hon. Judge)***