

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 23RD NOVEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: CV/942/2021

BETWEEN:

EDOZIE OBIDIGWE

MANEKE OGUEJIOFOR

EZEUDU CHILOKWU

NNANWUDE NNAEMEKE

(For themselves and on behalf of other Members
of Uwaofu Age Grade Ruling Council
of Umuekwe of Enugwu-Aguleri, Anambra State)

- - **APPLICANTS**

AND

INSPECTOR GENERAL OF POLICE

NIGERIA POLICE FORCE

- } **RESPONDENTS**

JUDGMENT

The applicant filed a motion dated 25th March, 2021 brought pursuant to Section 24 (1) Section 35 (1)(a), Section 44(1) of the constitution of Federal Republic of Nigeria 1999 (As Amended). And Order 2 Rule 1 of the Fundamental Rights, (Enforcement Procedure)Rules 2009.

It is seeking for the following:

- A. *An Order enforcing the Applicants Fundamental Right to liberty, dignity and right to acquire and own immovable property pursuant to Section 34(1), (a) Section 44 (1) of the Constitution of Federal Republic of Nigeria 1999 (As Amended).*
- B. *An Order of injunction restraining the Respondents and its agents from further threatening to arrest, arresting or detaining the Applicants.*
- C. *An Order directing the Respondents and its Agents to stop further with from having intimidating, victimizing, threat of Arrest, Arresting, detaining the Applicants on issue concerning the Ownership of landed property.*
- D. *A Declaration that the detention of some of the applicants from Monday, 18th of January, 2021 to 20th of January, 2021 by the Respondent and its Agent without justifiable reasons is unconstitutional, violent and infringement of the applicants fundamental right to liberty, dignity and right to own immovable project in a matter which is Civil in nature.*

- E. An Order directing the Respondent to pay the Applicants the sum of Ten Million Naira (N10,000,000)Naira only as compensation for the detention and flagrant/continues violation of the Applicants right.*
- F. And for such further order(s) as this Honourable court may consider just to make in the circumstances of this case.*

The grounds which these reliefs are sought are:

- i. That the invitation, victimization, harassment, detention, interrogation and continuous calling, invitation of the Applicants in the Respondent and its Agent is contrary to Section 34(1)(A), Section 35(1)(A) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and African Charter on Human & Peoples' Right (Ratification and Enforcement)Act, Cap A, 9 LFN, 2010 as both guaranteed the Applicant's Fundamental Right to personal liberty, dignity and right to own immovable property.*
- ii. That it is the Constitutional Right of the Applicants to seek redress on a court of law against any person or authority whenever the applicant feels that his right*

have been infringed or are being or likely to be contravened in accordance with Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

That it is wrongful, illegal, crude and unconstitutional for persons to instigate or hide under and using the machinery of the Respondents to cause harassment, intimidation, threat of Arrest, invitation, detention of the Applicant and settlement of civil matter.

Attached to the application is a 23 paragraphs affidavit and 4 paragraphs verifying affidavit EZEUDU CHILOKWU and EDOZIUNO OBIDIGWE, the 3rd Applicant and the 1st Applicant with Exhibits. Applicant equally filed a written address in support of their application.

The Respondents were duly served with the court processes and hearing notice but they chose not to appear in court to challenge nor controvert the attached affidavit of the Applicants. They did not bother to write to this Honourable court as to their failure to appear in court.

At the hearing of the application on 6th October, 2021 the applicant counsel adopted his written address and sought to rely on all averments in the applicants affidavit. Learned Counsel to

the applicants in his written address contended that the applicants are seeking reliefs contained in the motion paper as a result of the harassment, victimization, threat of arrest/arresting and detention of some of the members of the Applicants from 18th to 20th days of January, 2021 and 12th day February, 2021 by agents of the 1st and 2nd Respondents without justifiable reasons.

Learned counsel to the applicant argued that the provision of Section 35(1) and Section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and African Charter on Human & Peoples' Right (Ratification and Enforcement) Act, CAP A, 9 LFN, 2010, a citizen will be deprived of his personal liberty only when he is reasonable suspected to have committed a criminal offence. That the applicants' herein have not committed any offence known to law. He submitted that a civil matter on ownership and management of land without any ingredient of crime is not a matter for the Security Agencies like the 1st and 2nd Respondents to resolve as the material facts in issue are related to, connected with ownership and management of communal land situate at Anambra East Local Government of Anambra State. Learned counsel rely on the case of ARAB CONTRACTORS (O.A.O.) NIGERIA LTD V. GILLIAN UMANAH (2013) ALL FWLR (PT.683) amongst others.

That where there is a threat or continuous violation of a Fundamental Right of a person, an action will definitely be against such body or agencies especially when the establishment Act of the Respondents do not empower them to enforce a contract, collect debts of any kind or confirm those entrusted with management of a particular land in Nigeria.

Learned Counsel relied on Section 4 of the Police Act and Section 6 of the Economic and Financial Crime Commission (Establishment e.t.c) Act 2004 which deals with Police Powers and function of the Economic and Financial Commission. Learned counsel argued that the act and activities of the Respondents have infringed on the rights of the applicants, and this Honourable court has the powers to protect the applicants by power to protect the applicants by the reliefs sought in this application. On the issue of damages, learned counsel contented that this Honourable court has the powers to award damages even where there is no injury. He relied on the case of CLERK AND LINDSEL ON TORTS (15TH Edition, Sweet and MAXWELL 1982) PAGE 697.

"Even where there has been no physical injury, substantial damages may be awarded to the man for discomfort or inconvenience".

That the applicants have been subjected to mental and psychological torture. Applicant counsel concluded by urging the Honourable court to grant the prayers of the Applicants in the interest of justice and peace in the community, the applicant being meritorious.

Having read all the evidence before me very carefully, the only issue I find for determination is:

"Whether from the circumstances and facts before me, the Respondents have infringed on the right of the applicants".

The Supreme Court in the case of **RANSOME KUTI VS A.G. FEDERATION)1985(2 NWLR (PT.6)211 per Eso J.S.C.**

Defined Human Right thus:

*“It is a right; which stand above the ordinary laws of the land and which is in fact antecedent to the political society itself. It is a primary condition to civilized existence and what has been done to our constitution is to have these rights enshrined in the constitution so that the right could be immutable it the position of the law that a person may invoke the fundamental right enforcement rules under three instances as provided under Section 46(1)of the constitution of the Federal Republic of Nigeria 1999 (As Amended) See the case of **GOVERNOR BORNU STATE V. GADAMGARO (2016)1 NWLR”(PT.1493)396** the court stated as follows:*

“There are three instances under Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 when any person may invoke the Fundamental Right Enforcement Rules to seek redress in a court of law, namely; when it is alleged that any of the provisions

of chapter IV has been or is likely to be contravened; the second instance where it is alleged that any of the provisions of chapter IV is being contravened. It is therefore of importance to state in a case of Fundamental Human Rights as in this case, the onus is on the Applicant to show that this Fundamental Human Rights as enshrined in chapter IV is being, or has been or likely to be contravened”.

A recap of the affidavit in support of this application deposed to by the 3rd applicant herein who deposed that he is the 3rd applicant and a member of Uwaofu Age Grade Ruling Council of Unnekwe, Enugwu – Aguleri in Anambra East Local Government of Anambra State and by virtue of that he is conversant with the facts of this application states that, the applicants are charge with the responsibility of the management of parcel of land situate at Enyiokwe, Ochichi and Odene Enugwu. That on the 17th day of January, 2021 some of the member of Uwaofu Age Grade Ruling Council of Enugwu-Aguleri in Anambra East Local Government of

Anambra State were invited by the Agents of the Respondents from zone 13 on issues bordering on management and ownership of land located at Umunekwe village, Enugwu – Aguleri, Anambra State. That he and some of the applicants honoured the invitation at Nigeria Police Force, Zone 13, Anambra State, some of their members were detained and transferred to Nigeria Police Force, Headquarters, Abuja. That he and some of the applicants herein were released on the 20th day of January, 2021 after 3 days in police detention and were also invited on the 12th day of February 2021 by the respondents for verification/ownership of landed property in applicant's community.

That the applicants have been receiving calls from the agent of the Respondents threatening to arrest and detain the applicants.

The law is settled that the Nigerian Police and its operatives whether at the Federal State or zonal command are espoused by the Police Act and the Constitution of the Federal Republic of Nigeria 1999 (As Amended) to investigate crimes or perceived

damage which has been reported to them in the performance of their duties the police can investigate, invite, arrest, charge and prosecute any person whom they believe have committed an offence but such must be done judiciously and preserving the Fundamental Human Rights of the citizens and not be seen to be infringing the rights of citizens as enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

The applicants in this suit according to their counsel are still being threatened with arrest by the respondents. The Fundamental Rights the applicants are seeking to enforce are rights to liberty, dignity and right to acquire and own immoveable property pursuant to Section 34(1)Section 35(1)A, Section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

From the affidavit of the 3rd applicant in this application, it is manifestly clear that the issues for which the police had detained the applicants is purely civil which is not within the purview of the Nigeria Police. It is trite law that civil matters are not within the investigatory powers of the Nigeria Police. Moreover, the evidence of the applicant was not only unchallenged but the court is left with no choice than to deem the affidavit of the applicants as admitted and proved, as same is meritorious before this court.

See the case of **MAISASE VS. HASSAN (2004)11 NWLR (PT.883)** in the instant case, I therefore hold that all the averments in the affidavit of the applicants as the true state of affairs.

Accordingly **IT'S HEREBY DECLARED AND ORDERED AS FOLLOWS:**

(A) It is hereby declared that the arrest the arrest, detention by the Respondents of some of the applicants from Monday the 18th of January, 2021, to 20th

January, 2021 by the Respondents and its agent without justifiable reasons is unconstitutional and an infringement of the applicants Fundamental Right to Liberty, Dignity and right to own immovable property in a mater which is civil in nature.

- (B) The Respondents are hereby restrained either by themselves or through their agents from further arrest, threatening to arrest, harassing or detaining the applicants. In respect of this subject matter except through the leave of the Honourable court.
- (C) The Respondents, jointly and severally are hereby ordered to pay the applicant the sum of **N10,000,000** as compensation for violating the applicant's rights to personal liberty, dignity and right to acquire and own immovable property. The said sum to be paid by the Respondent forthwith.

Appearances:

Parties absent

Christy Mbam for the applicants

Judgment read in open court.

Sgd.
Hon. Judge
23/11/2021