

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI – ABUJA

ON THIS 16TH DAY OF DECEMBER, 2021

BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA

SUIT NO. FCT/HC/CV/2321/2021

BETWEEN

FRIDAY BOAZ - - - - - APPLICANT

AND

COMMISSIONER OF POLICE F C T ABUJA --- RESPONDENT

JUDGMENT

This is an Application for the Enforcement of the Fundamental Rights of the Applicant brought pursuant to Order 2 Rules 3, 4 and 5 the Fundamental Rights (Enforcement Procedure) Rules 2009 Sections 35(1) (4) (1) (A) (B) (C) and 36(5) of the Constitution of the Federal Republic of Nigeria 1999 and Articles 3, 4, 6, 7 and 12(1) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act 1990 CAP ACT 1990) CAP 10 Laws of the Federation of Nigeria 2004. The Applicant is praying for the following reliefs:

- 1. A Declaration that the continual detention of the Applicant by the Respondent in the custody of the Nigerian Correctional Service since September 2020 is unconstitutional, ultra vires, Mala fide, repressive, illegal and thus contravenes the Applicant's Fundamental Rights to personal liberty and freedom of movement as guaranteed by*

Sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 6 and 12(1) of the African Charter on Human and people's Right (Ratification Enforcement Act (CAP 10) laws of the Federation of Nigeria 2004.

- 2. An Order of the Honourable Court for the release of the Applicant unconditionally as his Fundamental Human Right is being infringed upon.*
- 3. An Order of the Honourable Court for an award of compensation in the sum of N10,000,000 (Ten Million Naira) against the 1st Respondent for violation of his right.*
- 4. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances.*

Attached to the application is a 4 paragraphs affidavit deposed to by one Miriam Osene and Exhibit A, which is a remand warrant Certified True Copy and Applicant's counsel Written Address.

FACTS OF THE CASE

The Applicant avers that he was taken to Apo Police Station by Chief Dogo of Nepa Village Apo on the 29th of September 2020, upon allegation of rape that allegedly took place in January, 2020 That the Applicant was detained at Apo Police Station cell for 2 months and 3 weeks before he was later taken to the disbanded SARS police station for onward transfer to Nigerian Correctional Service custody in Suleja. That the Applicant spent 1 month and 3 weeks at Nigeria Correctional Service at Suleja, before he was transferred to Nigeria Correctional Service custody Kuje that the

Applicant is still in detention at Nigerian Correctional Service custody in Kuje till date having not been arraigned before any court since he was arrested on the 29th of September 2020 till date.

Learned counsel in his written address formulated the following issues for determination of this Honourable court to wit:

- i. *Whether the right of the Respondents to arrest and detain this unlimited.*
- ii. *Whether the act of the Respondent is not a breach of the Applicants Fundamental rights and in contravention to the provisions of Section 35 and 41 of the Constitution of the Federal Republic of Nigeria and Articles 3, 4, 5, 6 and 12(1) of the African Charter on Human and People Right (Ratification and Enforcement Act 1990).*
- iii. *Whether the Applicant is not entitled to his liberty, freedom and fair hearing as enshrined in CHAPTER IV especially Section 35(1)and 41 of the Constitution of the Federal Republic of Nigeria.*
- iv. *Whether the Applicant is not entitled to an award of compensation for the unlawful detention as against the provision of the 1999 Constitution of the Federal republic of Nigeria.*

On the issue one above, learned counsel argued while relying on the case of **AGBI V FRN (2020)15 NWLR (1948)** that where a

statute provides for the method of during anything, it must be done in accordance with the express provision of the statute. Counsel argued that the right of the Applicant has been trampled upon. It has been infringe pursuant to Section 31 and 41 of the 1999 Constitution. Counsel submitted that the continual or prolonged stay of the Applicant in the custody of the 2nd Respondent is ultra vires, mala-fide and unconstitutional on a mere suspicious or speculative allegation as in this case. Counsel cited the case the case of **CHAIRMAN EFCC VS LITTLE CHILD (2016) 3 NWLR (PT. 1498) Pg. 72** to the Effect that detention must be within the arm bit of the law.

On issue two, learned counsel to the Applicant submitted that every person shall be entitled to his personal liberty and no person shall be deprive of such liberty save in the cases provided for in the constitution and in accordance with a procedure permitted by law. He cited **NGANJIWA VS. FRN(2018)NWLR (PT. 1609)**to the effect that where the constitution has stipulated steps that must be taken, before an action can proceed, omitting to do so would render such an act a nullity. That the Respondent has adjudged the Applicant to be guilty and thus punishing him without trial in contravention of the law.

On issue three counsel submitted that the Applicant has been subjected to inhumane treatment by the Respondent. He relied on **OKAFOR VS LAGOS GOVERNMENT** (Supra) to the effect that a Nigerian citizen is entitled to move freely throughout Nigeria. That the right to freedom of movement relates to all corners, nooks and crannies within Nigeria.

On issue four, learned counsel to the Applicant submitted that Applicant under the Fundamental Right Enforcement Procedure rules who establishes the breach of his fundamental rights is entitled to an award of damages. He relied on **OKAFOR V. LAGOS STATE GOVERNMENT (Supra)**.

In moving the application on 18 November, 2021 learned counsel to the Applicant informed the court that all the processes were served on the respondent on 1st November, 2021 it is on record that this court made an order that hearing notice be served on the respondent on that order, the respondent was served on 11th November, 2021. This matter was adjourned to 17th November, 2021 the court did not sit, another hearing notice was served on the respondent to informing them that the matter was adjourned to 18th November 2021, the respondent did not come to court. In view of the above the Applicant's counsel moved this application and adopts his written address and urged the court to grant his application.

I have carefully perused the application for the Enforcement of Fundamental Human Right as filed by the Applicant. I have equally perused the affidavit annexed, the exhibit and the written address of counsel. It is my considered view that this suit raises a lone issue for determination to wit:

"Whether from the circumstances and facts before me, the Respondent have infringed on the rights of the Applicant."

The supreme court in **Ransome Kuti Vs A.G of the federation (1985)2 NWLR (PT.6)211 per Eso J.S.C.** define Fundamental 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 a civilized existence and what has been done by our constitution is to have these rights enshrined in the constitution so that the right could be immutable".

It is settled principle that a person may invoked the Fundamental Right Enforcement Rules under 3 instances as provided under section 46 (1) of the constitution. See the case of **Governor of Borno State V. Gadangari (2016)1 NWLR(PT.1493)396** Court held as follow:

"There are three (3) instances under section 46 (1)of the constitution of Federal Republic of Nigeria 1999 (as amended) when any person may invoke the Fundamental Enforcement Rules to seek redress in a court of law, namely; it is alleged that any of the provision of chapter iv has been or is being likely to be contravened ; the second instance is where it is alleged that any of the provisions of chapter iv is being contravened the third instance is where the fundamental rights is likely to be contravened".

It is therefore pertinent to state that in the case of Enforcement of Fundamental Human Rights as in this case, the onus is on the Applicant to show that his fundamental Human Rights as enshrined in chapter IV of the 1999 Constitution is being, or has been or is likely to be contravened.

As avers in the affidavit in support of this application deposed to by one Miriam Osene a counsel in the office of the Applicants' counsel, that all facts contained in the statement and affidavit were facts gotten from the Applicant's counsel that the Applicant is still in detention at Nigerian Correctional Services Kuje Abuja since he was arrested by the Respondent on 29th September 2020 till date.

The law is settled that the Nigerian Police and its operatives whether at the Federal, State or Zonal Command are empower by the Police Act and the constitution to investigate crimes or perceived danger, which has been reported to them. In 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 judicially and preserving the Fundamental Human Right of citizens as enshrined in the chapter IV of the constitution of the Federal Republic Of Nigeria,1999 (as amended).

That the applicant in this suit is still being in detention without going to trial or proper court order.

Respondent on the other hand, have failed to justify the continued detention of the Applicant in their custody. The fundamental Right that the Applicant is seeking to enforce is the right to personal liberty guaranteed by section 35 (1) of the constitution, which states:

“Every person shall be entitled to his liberty and no person shall be deprived of such liberty save in the following cases and in accordance with the procedure permitted by law”.

Section 35 (1), (c) of the 1999 constitution (as amended) mention the instances where right to personal liberty of an individual can be deprived which is for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicious that he has committed a criminal offence.

Section 35 (1) B says and I quote.

“Every person shall be entitled to his liberty and no person shall be deprived of such liberty save in the following cases and in accordance with the procedure permitted by law”.

(b) by reason of failure to comply with order of a court or in order to secure the fulfilment of any obligation imposed upon him by law.

The affidavit in support of this application dated 14th September 2021 deposed to by one Miriam C Osene in paragraphs 4 (u) says “ That a bail application was made before a magistrate court at Life camp, Federal Capital Territory, Abuja on the 26th day of July 2021.

Paragraphs 5 went ahead to say “That the applicant’s application for bail was granted at the magistrate Court, Life Camp Abuja on the 26th July 2021. That the applicant was unable to fulfil the bail conditions.

In my view, having averred above in his affidavit in support of the application, it is my considered legal opinion pursuant to section 35(b) of the 1999 Constitution as amended that the applicant's detention at the kuje correctional facility is as a result of non perfection of the Bail condition as imposed by the chief magistrate court, life camp, FCT Abuja and not by the actions of the respondent. The law is very clear on steps to be taken where a defendant is of the view that bail condition imposed by a competent court of law is excessive not by way of fundamental right enforcement procedure, I so hold. Consequently , application for fundamental Rights enforcement dated 13th September 2021 filed on 14th September 2021 is hereby dismissed for Lacking in merit.

Appearances:

Parties absent,

Victor Oziegbe for the applicant.

The respondent is not in court.

Judgment read in open court.

Signed
Hon Presiding Judge
16th/12/2021