

IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT MAITAMA, ABUJA

ON WEDNESDAY, 23RD DAY OF FEBRUARY, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/M/9454/2020

BETWEEN

MR. ALEXANDER AMUTA

APPLICANT

AND

THE INSPECTOR-GENERAL OF POLICE

RESPONDENT

JUDGMENT

In his Originating Motion filed on 2/9/2020, the applicant seeks the following reliefs against the respondent:

1. A declaration that the detention of the applicant by the respondent on the 7th of July, 2020 to 8th of July, 2020 is unlawful and an infringement of the applicant's fundamental human rights.
2. A declaration that the written undertaking and Fidelity Bank cheques obtained from the applicant by the respondent with respect to a civilcontract is an infringement of the applicant's fundamental right.

3. A declaration that the fundamental human right of the applicant is likely to be further infringed having regard to the continuous harassment, intimidation and threat by the respondent to enforce the written undertaking extracted from the applicant.
4. An order of Court enforcing the fundamental human rights of the applicant forthwith.
5. An order of redress and compensation in favour of the applicant against the respondent in the sum of N20,000,000.00 only and a written apology for the violation of the applicant's fundamental human right.
6. An order of perpetual injunction restraining the respondent by itself or its officers from further arrest, intimidation, detention or any further act of infringement or violation of the applicant's fundamental human right with respect to the civil contract agreement entered on 12th day of December, 2017 thereof.
7. And for such further and any other order or orders as this Honourable Court may deem fit to make in the circumstance.

In support of the Originating Motion are: [i] Statement setting out the name and description of the applicant, the reliefs sought and the grounds upon which the reliefs are sought; [ii] the 7-paragraph affidavit deposed to by Onoja Sylvester, the litigation secretary in the Law Firm of Igeh, A. O. & Co., and Exhibits A, A1, B, C, D & E attached therewith; [iii] written address of A.

A. AkorEsq. filed on 2/9/2020; and [iv] the applicant's 18-paragraph further affidavit filed on 19/2/2021 and Exhibits A1-A3, B & C attached therewith.

From the records in the case file, respondent was served with the Originating processes on 6/10/2020 and hearing notices. For the proceedings of 7/2/2021, the respondent was served with hearing notice on 2/12/2021. The respondent did not file any process and did not attend Court. On 7/12/2021, Onuh Daniel Esq. adopted the applicant's processes.

In the affidavit in support of the Originating Motion, Onoja Sylvester stated the following facts based on the information he got from the applicant, which he verily believed:

1. The applicant is a director of BPM Gold Concept Ltd. The applicant as the director of the company expressed his interest to engage in business of Gold mining, which foreign investors indicated their interest to invest.
2. The exploration license with No. 22095EL dated 1/4/2016 belonging to Sodangi Resources Company Ltd. was acquired upon which an agreement dated 12/12/2017 [Exhibit B] was executed between the parties.
3. As a show of commitment, the applicant paid N200,000.00 to Sodangi Resources Company Ltd. shortly after the execution of the agreement.

4. The agreement was executed following the assurance of the foreign investor to fund the business. After the execution of Exhibit B, the foreign investor informed applicant of the condition for release of fund.
5. The foreign investor insisted that the name of Sodangi Resources Company Ltd. on the exploration license be changed officially to BPM Gold Concept Ltd. before it provides funds for the applicant's company.
6. Consequently, applicant applied for change of the exploration license from Sodangi Resources Company Ltd. to BPM Gold Concept Ltd. from the Ministry of Mines and Solid Development [Mining Cadastral Office] with the consent of Sodangi Resources Company Ltd. A copy of the approval for change of name is Exhibit C.
7. At the time the applicant obtained the approval and change of the exploration license to BPM Gold Concept Ltd., the license had already expired. This made the applicant to apply for renewal of the license to enable the foreign investor release funds. The said application is still pending.
8. The foreign investor has not paid or released any fund to the applicant's company in respect of the contract. Applicant's company encountered series of setbacks as the expected financial support needed to mobilize to site to commence exploration and pay the agreed instalments to Sodangi Resources Company Ltd. was not released by the investor.

9. The applicant called Hon. Ibrahim MahammudYahyaSodangi [one of the directors of Sodangi Resources Company Ltd.] from time to time to brief/update him of the challenges preventing him from moving to site.
- 10.The respondent invited the applicant vide a letter dated 26/6/2020 upon an alleged petition; the letter is Exhibit D. On 7/7/2020, the applicant presented himself before the officer of the respondent at AIG Zone 7, Police Headquarters and was informed that he committed criminal breach of trust and other criminal offences.
- 11.The copy of the petition written by the said company was not shown to the applicant for him to respond to the allegation. The applicant was compelled to write statement as a common criminal.
- 12.The applicant explained that the agreement was a civil transaction and theforeign investors/partners are yet to release money for his company to mobilize to site. The respondent did not believe the applicant even when he showed the officers the contract agreement. They insisted that he must pay the contract sum.
- 13.The applicant was detained from 7/7/2020 to 8/7/2020 and later admitted to bail on stringent conditions for him to deposit N200,000 as commitment fee before he was released.
- 14.The applicant was further compelled to issue post-dated chequesof N10,000,000 to be cleared in two tranches of N5,000,000 each to fall due on or before 25/8/2020 and on or before 7/9/2020 respectively.

15. The applicant made an undertaking dated 8/7/2020 to the respondent in compliance with the conditions. He made part payment of N100,000 on 10/7/2020 and completed the payment on 14/7/2020.
16. Sequel to the various phone calls and threat by officers of the respondent, the applicant paid additional N100,000 on 28/8/2020 as further commitment fee.
17. The officers of the respondent have been harassing and intimidating the applicant and even threatened to detain him anytime he reports to the respondent's office.
18. The applicant did not commit any offence known to law to warrant the respondent to harass, intimidate, arrest or even detain him with respect to the contract agreement dated 12/12/2017.

In the further affidavit, the applicant stated that:

1. In spite of the pendency of this suit, as a show of commitment to discharge the obligation on the contract agreement dated 12/12/2017, he instructed his solicitors to draw up modalities to do the needful.
2. The lawyers for the parties reached an agreement and reduced same into writing vide their various correspondences dated 21/10/2020, 2/11/2020 and 17/11/2020, which are respectively Exhibits A1, A2 & A3. By agreement of both counsel, another meeting was fixed on 22/1/2021 for parties to discuss the modalities and progress made so far.

3. To his surprise, the officers of the Nigeria Police Force in conjunction with officers of the Economic and Financial Crimes Commission [EFCC] interrupted the meeting held in the Law Firm of I. B. Mahmud & Associates [Solicitors for Sodangi Resources Company Ltd.] and arrested and threatened him.
4. He was taken to EFCC Headquarters on 22/1/2021 and compelled to write statement without showing him the copy of the purported petition. On 23/1/2021, the officers of EFCC called the officers of the respondent and he was taken to Minna, Niger State, Police Command.
5. The officers of the respondent maltreated, intimidated and harassed him. He was compelled to write an undertaking with the officers of the respondent at Minna, Niger State Police Command as a condition for admitting him to bail.

Submission of learned counsel for the applicant:

In his written address, A. A. AkorEsq., learned counsel for the applicant, formulated three issues for determination. These are:

1. Whether this Honourable Court has the jurisdiction to enforce the applicant's fundamental rights and grant the reliefs sought in the instant application.
2. Whether having regards to the arrest, detention and continuous harassment of the applicant by the respondent since 7th July, 2020 to

8th July, 2020 without a just cause, infringes [*sic*] the fundamental rights of the applicant by the respondent.

3. Whether the applicant is entitled to the reliefs sought.

The applicant's counsel stated that the facts in the affidavit have disclosed an infringement of the applicant's rights as protected under sections 34[1], 35[1], 37 and 41 of the 1999 Constitution [as amended] and Articles 2, 6 and 12 of the African Charter on Human and Peoples' Rights [Ratification and Enforcement] Act, Cap. A9 Laws of the Federation of Nigeria, 2004. He argued that the detention of the applicant by the respondent was not for the purpose of bringing him before a court or upon reasonable suspicion of his having committed an offence. Rather, the respondent used the opportunity to extract money from the applicant and to punish him. He emphasized that the respondent detained the applicant without justification in contravention of section 35[1][c] & [4] of the 1999 Constitution [as amended] because the contract agreement dated 12/12/2017 is purely a civil transaction.

Mr. A. A. Akor further submitted that the detention of the applicant from 7/7/2020 to 8/7/2020 and his harassment, intimidation and threat via phone calls constitute an infringement of his fundamental rights to dignity of human person, personal liberty and freedom of movement. It was submitted that the burden of proving the legality or constitutionality of the detention of the applicant is on the respondent. Learned counsel for the applicant referred

to the cases of Iyere v. Doru [1988] 5 NWLR [Pt. 44] 665, Abiola v. Abacha [1998] 1 HRLRA 458 and Jimoh v. A.G., Federation [1998] 1 HRLRA 513 in support of his submission.

Mr. A. A. Akor also submitted that where an applicant has established an infringement of any of his fundamental rights, he is entitled to redress, compensation and public apology. He relied on section 35[6] of the 1999 Constitution [as amended] and the case of Jim-Jaja v. C.O.P., Rivers State [2013] 6 NWLR [Pt. 1350] 225. The applicant is also entitled to general and exemplary damages having regard to what he suffered particularly the loss of human dignity.

Decision of the Court:

In the Statement in support of the Originating Motion, the applicant stated the grounds upon which his reliefs are sought. In the grounds, the applicant complained of the violation of his fundamental rights guaranteed by sections 34[1][a], 35[1], 37 and 41 of the 1999 Constitution [as amended] and related provisions in Articles 2, 6 and 12 of the African Charter on Human and Peoples Rights [Ratification and Enforcement] Act.

The Court is of the opinion that the issues for resolution are first, whether the applicant has established that the respondent violated his fundamental rights; and second, whether applicant is entitled to the reliefs sought. These issues will be determined together.

Let me first set out the relevant provisions of the 1999 Constitution [as amended].Section 34 [1][a] thereof provides:

1. *Every individual is entitled to respect for the dignity of his person, and accordingly –*

[a] no person shall be subjected to torture or to inhuman or degrading treatment.

Section 35[1] thereof reads:

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 a procedure permitted by law.

The procedures permitted by law are stated in section 35[1][a]-[f] thereof.

Paragraph [c] of subsection [1] of section 35 is relevant. It reads:

[c] for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

Section 37 of the 1999 Constitution [as amended] provides:

The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

Section 41[1] thereof reads:

Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

From the unchallenged evidence of the applicant, his case is that by letter dated 26/6/2020 [Exhibit D], he was invited by the respondent “upon an alleged petition.” The letter of investigation reads in part: “This office is investigating a case of alleged Criminal Breach of Trust, Obtaining By false Pretence and Threat to Life, in which the need to obtain certain clarification from you became imperative.” The applicant went to the office of the respondent at AIG Zone 7, Police Headquarters, Abuja on 7/7/2020 and was compelled to write a statement in response to the allegations. He explained to the officers of the respondent that the agreement was a civil transaction and the foreign investors/partners are yet to release money to enable his company mobilize to site. He was detained till 8/7/2020 when he was released on bail on stringent conditions.

Now, by virtue of the provisions of section 4 of the Police Act, the functions of the Police include the prevention and detection of crime, the apprehension of offenders, the preservation 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. Thus, officers of the Nigeria Police Force are statutorily empowered to investigate all allegations of crime, apprehend and

detain a person upon reasonable suspicion of his having committed a crime. See Obinegbo & Ors. v. I.G.P. & Ors. [2020] LPELR-50980 [CA]. However, in the exercise of their powers of arrest and detention, the respondent and other Police officers must act in accordance with the law and not arbitrarily.

Part of the complaints of the applicant is that his arrest and detention by the respondent were based on a civil transaction between his company [BPM Gold Concept Ltd.] and Sodangi Resources Company Ltd. It is worthy to note that an allegation of crime may arise from a civil transaction like in the instant case where there are allegations of criminal breach of trust, obtaining by false pretence and threat to life made against the applicant arising from the agreement of 12/12/2017. Since the respondent received a petition against the applicant, he and officers under him are statutorily empowered to investigate the allegations in order to determine whether, *prima facie*, a criminal offence has been made out against the applicant.

The applicant also complained that his detention by the respondent from 7/7/2020 to 8/7/2020 was a violation of his fundamental rights to dignity of human person, personal liberty, private and family life and freedom of movement. Section 35[4] of the 1999 Constitution [as amended] provides that a person arrested and detained in accordance with section 35[1][c] thereof shall be brought before a court of law within a reasonable time i.e. within one day or two days as provided in section 35[5] thereof.

The Court holds the view that the effect of the provisions of section 35[1][c], [4] & [5] of the 1999 Constitution[as amended] is that where the person arrested and detained upon reasonable suspicion of his having committed a criminal offence is not charged to court within a reasonable time, he should be released on bail. In the instant case, the applicant was released on bail within a reasonable time since he was detained on 7/7/2020 and released on bail on 8/7/2020. The Court rejects the submission of A. A. Akor Esq. that the respondent violated the applicant's rights under sections 34[1], 35[1], 37 and 41 of the Constitution.

The applicant also complained that before he was released on bail, he was made to deposit the sum of N200,000 as commitment fee, he was compelled to issue post-dated cheques of N10,000,000 of N5,000,000 each and he made an undertaking in compliance with the conditions. Based on this evidence, the applicant seeks a declaration in relief 2 that the written undertaking and Fidelity Bank cheques obtained from him by the respondent constitute a breach of his fundamental right.

The law is well established that the functions of the Police do not include debt recovery. In other words, the Police are not debt recovery agencies. See **NB Plc. v. Akperashi & Anor. [2019] LPELR-47267 [CA]** and **Ifemeje v. Umuchu Community Bank [Nig.] Ltd. & Ors. [2020] LPELR-50623 [CA]**. In view of the above principle, I hold that the undertaking which the respondent obtained from the applicant and the two cheques he issued were wrongful.

In relief 3, the applicant seeks a declaration that his fundamental rights are likely to be further infringed having regard to the continuous harassment, intimidation and threat by the respondent to enforce the written undertaking extracted from him.

In paragraph 3[xxix] & [xxx] of the affidavit in support of the Originating Motion, it is deposed that the officers of the respondent have been harassing and intimidating the applicant and even threatened to detain him any time he reports to the respondent's office; and that the officers of the respondent phoned applicant and threatened to revoke his bail. In his further affidavit, the applicant narrated how he was arrested by officers of the Nigeria Police Force in conjunction with officers of EFCC and was later taken to Minna, Niger State, Police Command. Based on these unchallenged facts, the Court holds that the applicant has established that his rights to personal liberty and freedom of movement are likely to be violated by the respondent. Therefore, relief 3 has merit.

In relief 6, the applicant prays the Court to make an order of perpetual injunction restraining the respondent and his officers from further arrest, intimidation, detention or any further act of infringement of his fundamental rights. By section 46[2] of the 1999 Constitution, the Court "*... may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter.*"

In the light of the decision of the Court on relief 3, it is desirable and properto make an order to prevent the respondent and his officers from further arresting, detaining, harassing or threatening the applicant with respect to the petition against him until they are ready to charge him to Court.

Conclusion:

From all that I have said, the applicant's suit succeeds in part. I make the following orders:

1. A declaration that the written undertaking and the Fidelity Bank cheques obtained from the applicant by the respondent were wrongful.
2. A declaration that the fundamental rightsof the applicant to personal liberty and freedom of movement are likely to be infringed having regard to the continuous harassment, intimidation and threat by the respondent to enforce the written undertaking of the applicant.
3. An order of injunction restraining the respondent and his officers from further arresting, detaining, harassing, intimidating or threatening the applicant with respect to the petition against him until they are ready to charge him to court.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

Onuh Daniel Esq. for the applicant.