

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/1730/2016

BETWEEN:

**NWABUEZE CHUKWUEMEKA.....APPLICANT
VS**

- 1. THE NIGERIA POLICE FORCE**
- 2. INSPECTOR GENERAL OF POLICE**
- 3. COMMISSIONER OF POLICE, FCT COMMAND**
- 4. POLICE SERVICE COMMISSION**
- 5. CONSTABLE JEREMIAH JOHN.....RESPONDENTS**

RULING/JUDGMENT

The Applicant – Nwabueze Chukwemeka, filed this application for enforcement of his Fundamental Rights by a Motion on Notice dated 13/5/2016 and filed same day, the motion is brought pursuant to Sections 34(1)(a); 41(1); 42(2) and 46 of the 1999 Constitution of Federal Republic of Nigeria (As Amended), Order 2 Rules 1,2,3,4 & 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Articles 5,15,16 and 19 of African Charter on Human and Peoples Rights (Ratification & Enforcement) Act, Cap, A9, LFN 2004, inherent jurisdiction of the court as preserved by Section 6(6) of the 1999 Constitution (As Amended).

The Applicant is seeking for the following reliefs set out below;

1. A DECLARATION that the shooting of the Applicant by the trigger happy policemen of Asokoro Police Division FCT command Garki, on 17th day of August 2015 is unconstitutional, unlawful, and a violation of the Applicant's Fundamental Rights to Dignity of Human person and Freedom of Movement as guaranteed by the 1999 Constitution (As Amended).
2. AN ORDER directing the Respondents to take the Applicant abroad for full medical treatment.
3. AN AWARD of ₦500,000,000.00 (Five Hundred Million Naira) as compensation in favour of the Applicant for violating the Fundamental Rights of the Applicant.
4. AN ORDER directing the Respondents to pay the Applicant the sum of ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira) for the medical bills and drugs already bought at various Hospitals and Pharmacy and for continuous medical check-up.
5. And for such further orders this Honourable Court may deem fit to make in the circumstance.

Filed along with the said Motion is the Statement of facts setting out the name, and description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought. The application is supporting by a 31 Paragraph affidavit sworn to by the Applicant on 13/5/2016, with Six(6) Exhibit, marked "A", "B", "C", "D", "E" and "F1-F57". In response to the counter-affidavit filed of the 1st – 4th Respondents, filed a Further and

Better affidavit of 12 Paragraphs dated 10/10/2017, sworn to by the Applicant. Also filed is a Written Address, adopts the said processes and urged the court to grant the reliefs sought.

In Response, the 1st – 4th Respondents, filed a 15 Paragraph counter-affidavit in opposition to the application, sworn to by one Sgt. Philip Tumba on 9/5/2017. Also filed is a Written Address and urged the court to dismiss the application.

The 5th Respondent was duly served with the processes but failed to react to it.

In the Written Address of the Applicant, dated 13/5/2016, settled by M.C. Ukachukwu Esq. Applicant Counsel, only one(1) issue was formulated for determination, which is;

“Whether the Applicant has put forward facts warranting the granting of the reliefs sought”

In the Written Address of the 1st – 4th Respondents dated 9/5/2019, settled by James Idachaba Esq. 1st – 4th Respondent Counsel, three (3) issues were formulated for determination, which are:-

1. Whether the Applicant Fundamental Human Rights as guaranteed by the 1999 Constitution of Nigeria. (As Amended) has been breached by the 1st – 4th Respondent.
2. Whether taking into consideration all the facts of this case, there are sufficient facts before this Honourable Court linking the 1st –

4th Respondents with the 5th Respondent and the complaint of the Applicant.

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

The case of the Applicant, in summary, is that the Applicant is a victim of a gunshot from a trigger happy Policemen – 5th Respondent on his person on 17/8/2015 and which caused him to be hospitalized, received treatment at huge cost, with no assistance from the Respondents despite all efforts of his lawyer to meet with the Respondents at various times. In proof of his case, attached Exhibits "A" – "F1-F57".

The 1st – 4th Respondents in reaction to all of these, in summary, is that the Applicant has failed to establish any nexus between the 5th Respondent and the 1st – 4th Respondent over his claim of breach of his Fundamental Human Rights to warrant the reliefs sought. Further that the complaint of the Applicant does not fall within the purview of the Fundamental Right guaranteed under chapter four(iv) of the 1999 Constitution, that this is case where the Applicant ought to bring out a personal action against the 5th Respondent.

I have carefully considered the processes filed and the submission of both Counsel, and it is the finding of this court that only one (1) issue calls for determination, which is;

"Whether consequent upon the facts contained in the Applicant's application and the material facts placed before the court, the Applicant has established a breach of the Fundamental Rights so as to entitle him to the rights sought"

This sole issue encapsulates all the issues formulated by both Counsel in their Written Address.

In the first place, the 5th Respondent was duly served with the processes, failed to react to it and not represented by Counsel of his choice at the hearing of the suit. The implication of this is that the facts as contained in the affidavit of the Applicant is not controverted nor challenged by the 5th Respondent. In the circumstance, the court will in considering this application, confine itself to the affidavit evidence of the Applicant and the 1st – 4th Respondent.

Also, must be noted that the 1st – 4th Respondent Counsel did not appear in court to adopt their processes in court on the said date the case was set for hearing, in consequence and in line with Order xii Rule 3 of the FREP Rules, this court will deem the process adopted and proceed as such.

In this instant application, it touches on the alleged breach of the Applicants Fundamental Human Rights enshrined in Section 34(1)(a), 41 (1), 42(2) and 46 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended); Articles 5,15,16 and 19 of African Charter on Human and Peoples Right (Ratification & Enforcement) Act, Cap A9. LFN 2004.

Overtime, it has been held that where complaint of breach of Fundamental Human Rights is before the court, it must be thoroughly examined to ascertain the alleged breach. See Nemu Vs A – G. Federation (1999) 6 NWLR (PT. 453) it must stated, that, in the determination of the issue at hand, it is trite law that he who asserts must prove, the Applicant in this

instant application has the onus of proving with credible evidence, that his Fundamental Human Rights have been violated. See the case of Onah Vs Okenwa (2010) 7 NWLR (PT. 1194) 512 @ 523 – 536.

It is trite that an Applicant seeking the enforcement of his Right under Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 has the burden duty to show that the reliefs sought falls within the purview of the right as stated in the Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and giving effect to by express Provision of Section 46 of 1999 Constitution and Order 11 Rules 1 of the Fundamental Rights Enforcement Rules, 2009. In the case of Uzoukwu Vs Ezeonu 11 (1991) 6 NWLR (PT. 200) 708 @ 751, the court in constructing the Section 42 of 1979 Constitution, which in pari material with Section 46 of 1999 Constitution as follows:-

“That a person who wishes to Petition that he is entitled to a Fundamental Right”

- (a) Must alleged that any Provisions of the Fundamental Right under Chapter IV has been contravened or.
- (b) Is likely to be contravened, and
- (c) The contravention is in relation to him.

A careful perusal of the Applicant affidavit and the entire process clearly, stating the narratives of events leading to the alleged breach of his rights, juxtaposed with the 1st – 4th Respondent affidavit in opposition, contending that there is no linkage between the 5th Respondent and the 1st –

4th Respondent with respect to the Applicant's claim, in the court firm view cannot be entirely correct, I say so because the 1st – 4th Respondent did not in any of the Paragraphs of their counter-affidavit, controverts nor challenge, this facts stated in Paras 7,8,9,10,11,12,13,15 and 16 of the affidavit in support of the Applicant's Motion and Paragraphs 3,4,5 and 6 of the further affidavit of the Applicant.

Granted that this position, stands true, can it be held that this is the proper action to be taken by the Applicant against the Respondent, I think not. This being a personal action for injuries against the Applicant, it is the firm view of the court that the Applicants should take out personal action against the Respondents. It is therefore, the firm view of this court that this action by the Applicant under the Fundamental Rights Enforcement Procedure is not the proper venue for his action. Accordingly, this suit is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

17/1/2022

APPEARANCE:

YAGAZIE OBINNA FOR THE APPLICANT

NO APPEARANCE FOR THE RESPONDENTS