

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 7,  
APO, ABUJA.**

BEFORE HIS LORDSHIP: **HON. JUSTICE O. A. MUSA.**

**SUIT NO. FCT/HC/BW/CV/214/2020**

**BETWEEN**

1. **EMENIKE HENRY PROSPER**



**APPLICANT**

**AND**

1. **INSPECTOR GENERAL OF POICE**

2. **BABATUNDE ALABI**

3. **LINDA ADA OKPE**



**RESPONDENTS**

**JUDGMENT**

This is one of those cases resulting from a relationship that was enjoyable but, for some reasons best known to the parties, it went sour resulting to the parties' resorting to any means to get even with each other. This pathetic and unfortunate that, case this sort of is becoming rampant in Abuja.

The Applicant has sued the Respondent via an Originating Summons under the Fundamental Human Right Procedure Rules and the various sections of the Constitution of FRN 1999 as amended, claiming as follows:

1. A declaration that the detention of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from the 17<sup>th</sup> August, 2020 to 24<sup>th</sup> August, 2020 without a lawful order of a court, is illegal, oppressive, unconstitutional and a flagrant abuse of the Applicant's Fundamental Right.
2. A declaration that the arrest and detention of the Applicant by the Respondents for the allegations for which the 1<sup>st</sup> Respondent is already investigating by an order of court and for which the Applicant has volunteered statement and granted bail at the behest of the 3<sup>rd</sup> Respondent, who is aware of the investigation, amounts to reckless exercise of police power, oppressive and cumulated to the violation of the Fundamental Rights of the Applicant by the Respondents.
3. An order of this Honourable court awarding the sum of Ten Million Naira N10, 000,000.00 personally against the 2<sup>nd</sup> Respondent for abusing the Fundamental Rights of the Applicant.
4. An order of this Honourable court awarding the sum of Five Million Naira N5,000,000.00 jointly and severally against the 1<sup>st</sup> and 3<sup>rd</sup> Respondents for abusing the Fundamental Rights of the Applicant.

5. An order directing the 2<sup>nd</sup> Respondent to publish a public apology on a full page newspaper that have national circulation, to the Applicant and notify him accordingly.
6. Any other order or orders that this Honourable court may deem fit to make in the circumstances.

In support of this application, the Plaintiff filed a statement in support, stating his names, address, occupation, the facts, and the grounds relied on in bringing this application. He also filed an affidavit of eleven (11) paragraphs deposed to by one Ebere Nwnaya. The Applicant similarly filed a verifying affidavit and a Written Address in line with the rules of Court.

Upon being served, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a Joint Counter Affidavit on the 3<sup>rd</sup> day of September, 2020. The Counter Affidavit is of eleven (11) paragraphs deposed to by one Inspector Joshua Yohanna. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents also annexed five Exhibits to their Counter Affidavit.

In line with the rules of Court, they filed a Written Address. On the part of the 3<sup>rd</sup> Respondent, upon being served, she filed twenty three (23) paragraphs Counter Affidavit, deposed to by herself and annexed eleven (11) Exhibits thereto.

The Plaintiff on the 17<sup>th</sup> day of November, 2020, filed a Further and Better Affidavit in response to the Counter Affidavits of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. He annexed two (2) Exhibits thereto.

I have carefully read all the processes filed in this case, as well as the Exhibits annexed thereto and the addresses of the counsels. When the case came up on the 19<sup>th</sup> day of November, 2020, counsel to the Plaintiff adopted her Written Address, while that of the 3<sup>rd</sup> Respondent merely said we are not objecting to the application to move by the Applicant's counsel, but failed to adopt his Written Address.

Section 46(1) of the 1999 Constitution as amended provides that, "any person who alleges that his Fundamental Right as enshrined in the Constitution has been, or being or likely to be contravene may apply to the High Court for a redress."

In essence, where a citizen perceive that his Right as guaranteed by the constitution has been violated, or is likely to be violated, the Constitution guaranteed him the Right to approach the Court for a redress. The onus is on the Applicant to prove that, any of his Rights has been, or is likely to be violated. In the case of *UZOUKWU Vs. EZEONU II* (1991) 6 NWLR (Pt. 200) 708 at 751. The Court of Appeal held that:

**“The Section required that, a person who wishes to petition that.  
.... he is entitled to Fundamental Rights;**

- a. Must allege that, any provision of Fundamental Right under Chapter IV has been contravened, or**
- b. Is likely to be contravened, and**
- c. That, the contravention is in relation to him.”**

In the instant case, I have carefully looked at the Statement of fact verified by the affidavit of the Claimant, I am satisfied that, the requirement of Section 46 of the Constitution 1999 as amended has been met by the Applicant in bringing this application to enforce his Fundamental Rights.

The Applicant succinctly stated in his Statement of facts at paragraphs 34 to 51 the several facts suggesting that, he was arrested and detained by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without bail for a length of time suggesting a violation of his Fundamental Right.

As I said earlier, the onus remains with the Applicant to show that, his Fundamental Right as guaranteed by the Constitution has been violated. I dare add that, he must also show that, the Respondents are the ones who have violated his said Rights before the onus will shift to the Respondents. In FAJEMIROKUN

Vs. C. B. (C. T.) NIG. LTD (2002) 10 NWLLR (Pt. 774) Pg. 95 at 110 paras F – G, where the Court held that,

**“For an Applicant alleging infringement of his Fundamental Rights to succeed, he must place before the Court all vital Evidence regarding the infringement or breach of such Rights. It is only thereafter that, the burden shifts to the Respondents where that, has not been done or where scanty Evidence was put in by the Applicant, the trial Court can strike out such application for being devoid of merits. In the instant case, the trial Court was Right in holding that, the Applicant was devoid of any merit as the Appellant failed to provide sufficient facts in his supporting Affidavit to establish that his Fundamental Right was infringed.”**

In the present application, the question is did the Applicant provide sufficient facts before the Court to establish that his Fundamental Rights was violated? Again, if the answer to the above is in the affirmative, are the Respondents culpable or responsible for the said violation of the claimant's Fundamental Rights as guaranteed by the Constitution?

The answer to these questions can only be found upon a critical and through examination of the various processes filed by the parties.

In the originating summons, the Applicant had alleged that, he was invited to the Police Station at the Force C. I. D. Area 10, Abuja. That, he visited the said Police Station on the 17<sup>th</sup> day of August, 2020, in company of his Lawyer, Ebere Nwanya. That, after he finished writing a statement upon going through the Petition written by the 3<sup>rd</sup> Respondent against him, he was clamped into and remained in the Police Cell.

Despite the plea of his counsel and the availability of a surety to stand in for his bail, the 2<sup>nd</sup> Respondent refused to grant him bail stating that, the officer who is to sign the bail document was not around. The Applicant remained in detention of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from the 17<sup>th</sup> day of August, 2020, and was still there even at the time of filing this application on the 24<sup>th</sup> day of August, 2020.

On the part of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, they deposed that, they received a Petition from the 3<sup>rd</sup> Respondent against the Applicant and invited the Applicant to shed light on the Petition. That, they had obtained a warrant from a Court authorizing the police to detain the Applicant in the Custody until further order or disposal before the 31<sup>st</sup> day of August, 2020. A copy of the warrant was Exhibited as Exhibit 'D', in the case.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents further deposed that, the detention of the Applicant was necessary to enable the Police conclude its investigation and that, on the 27<sup>th</sup> day of August, 2020, upon the conclusion of their investigation, they charged the Applicant to Court. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents annexed Exhibit 'E' as the F. I. R. with which the Applicant was charged to Court.

I shall reserve my further comments on Exhibits 'D' and 'E' aforesaid until later in this judgment. The 3<sup>rd</sup> Respondent on her part deposed to the fact that, she wrote a Petition to the 1<sup>st</sup> Respondent against the Applicant. She annexed her petition as Exhibit J. she deposed further that she has to make the petition when she notice that the Applicant was stalking her and threatening to kill her and her friend.

In essence, the 3<sup>rd</sup> Respondent corroborated the fact that she wrote a petition to the police against the Applicant. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not deny this fact. From my understanding of the defence put up by the 3<sup>rd</sup> Respondent, all she did was to complain against the Applicant to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents against the perceived or the suspected threat to her life by the Applicant. A citizen is legally empowered to safeguard his life against any threat.



Furthermore, where a citizen perceives that a crime has been or is likely to be committed such citizen owes it a duty to report to the police for investigation. In Chief (Dr) O. Fajemirokun V. Commercial Bank Nigeria Ltd and Anor (2009) 2 SCNJ 77. **“The citizens cannot be held culpable for doing their civic duty...”**

This civil duty is an injunction which the constitution at Section 24 (e) Impose on every citizen.

However, a citizen who is overzealous in performing this civic duty and in the process violate another citizen Fundamental Rights cannot be said to be performing a civic duties. No.

If he does so in contravention of the law, the shall be held culpable and responsible for his action. If a citizen maliciously makes a false complaint to the police against another citizen which complaint lacks merit and is reckless and in the process that other citizens Rights is violated, the citizen who made the complaint will be held culpable just as the person who violated that citizen's Rights. See the case of Orji Vs. Amara (2016) 14 NWLR (Pt. 1531) 21 C. A.

However, the onus will be on the Applicant to show that the complaint and action of the said citizen was reckless and malicious. This onus can only be discharged by the Applicant in

the facts clearly which he brings before the court in his application. In the instant case the Applicant depose that a petition was written against him by the 3<sup>rd</sup> Respondent to the police. That when he went to the police, the police gave him the petition to read and to write his own side of the story which he did, He also depose that on the 18<sup>th</sup> August, 2020, he was brought out of the detention where he was brought face to face with his accuser, the 3<sup>rd</sup> Respondent and they confronted each other with each other side of the story in the presence of the 2<sup>nd</sup> Respondent.

Beyond this, there is scant fact by the Applicant showing that the complaint of the 3<sup>rd</sup> Respondent to the police against the Applicant was false, reckless or malicious. The Applicant did not show also that the 3<sup>rd</sup> Respondent participated actively in ensuring that he was unlawfully detained by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. I hold that beyond the complaint made to the police by the 3<sup>rd</sup> Respondent against the Applicant, the 3<sup>rd</sup> Respondent did not take any further step or participate in the investigation and detention of the Applicant.

I shall now turn to the activities and action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents against the Applicant. As I held elsewhere in this judgment, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents admitted to have invited the Applicant to their station. They also admitted to

have detained the Applicant. They justified their action ostensibly in detaining the Applicant relying on a purported warrant obtained from the court. The warrant is annexed as Exhibit D. I have carefully perused the said Exhibit D. it was purportedly issued by M. A. Sadiq, A judge of the grade 1 Area Court. Aco Lugbe Abuja. It was issued on 17<sup>th</sup> August, 2020 the same date the Applicant honored the invitation of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to their office. It was directed or address to an official in charge of the prison "At police custody". The case number thereon is CR/233/2020. On the face of this document, it look authentic and a valid order of court. However, upon a closer study of same it will be discovered that it was address not to the police but the officer in charge of a prison which prison? None.

I made bold to say that there is no prison in Nigeria known as Police Custody. The Applicant upon being served with the counter affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a further affidavit and annexed thereto an application for a certified true copy of the file with case No. CR/233/2020.

The application was directed to the Registrar, Grade 1 Area Court Aco Estate Lugbe Abuja. Exhibit annexed to the further affidavit is a certified copy of the warrant of commitment of prison on remand issued to the Applicant by the said Registrar

of the court. Now the warrant Exhibit B is in respect of case No: CR/233/2020 issued by the said M. A. Sadiq Honourable Judge of the said Area Court. The parties are commissioner of police vs Nasiru Abdullahi. the date it was issued is 26<sup>th</sup> June, 2020. The parties in the Exhibit D annexed to the counter affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is I. G. P Vs Henry Emenike. I must pause at this point to ask what has become of the administrative system of the police? How can one document said two different things. The position of the law relating to certified true copy of documents is sacrosanct. section 104 of the Evidence Act enjoins every public officer having the custody of a public document to issue a certified true copy of such document to any person who has a Right to inspect same. And any officer who by the ordinary course of the official duty, is authorize to deliver such copy, shall be deemed to have the custody of such document within the meaning of this section. Section 105 of the Evidence act provide: that copies of document so certified may be produce in proof of the content of the public document which they purport to be copies. Exhibit D, Exhibited by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is a public document but it is not certified. It is of doubtful source.

I am not persuaded by it. in line with sections 104 and 105 of the Evidence Act, I am incline to believe the Exhibit B annexed to the further affidavit of the Applicant to be an authentic copy of the original warrant in the custody of the Grade 1 Area court Aco, Lugbe Abuja. The implication of this is that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed to produce before this court the warrant alluded to by them in their affidavit to Justify as necessary the detention of the Applicant. By the provision of Section 35 of the 199 constitution as amended “any person who is arrested or detained shall be brought before a court of law within a reasonable time. A reasonable time as provided in subsection 5 thereto is one day where a court of competent jurisdiction is within a radius of 40 kilometer. The Applicant was detained by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their custody in Abuja from the point of detention there are over 50 courts of competent jurisdiction within 40 Kilometers radius where the police could have taking the Applicant to within one day. But they failed to do so and kept the Applicant in their custody for more than one day relying on a non existence warrant of detention.

This suit was filed on 25<sup>th</sup> August, 2020 and the police were served the same date. They did not release the Applicant rather, they purported to have charge him to court on an F.I.R

which they annexed as Exhibit F. from their deposition, Exhibit E was filed in court on 29<sup>th</sup> August, 2020.

However, I have critically looked at Exhibit E filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents the document has nothing to show on it that the said F.I.R was ever submitted to any court nor is there any date on it suggesting when it was submitted to court.

I am of the view that the said Exhibit E of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was hurriedly put in place by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pull a wool over the eyes of this court. I hold that the detention of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without a lawful order of the court of competent jurisdiction from the 17<sup>th</sup> August, 2020 to the date this matter was filed is illegal unlawful and a violation of the Applicant's Fundamental Rights as guaranteed by the constitution, it is condemnable and a flagrant show of muscle by the police.

It is against the police Act under which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have sought to take refuge. I will say no more.

Where a person's Fundamental Rights has been violated, the person is entitling to damages in accordance with law. See the case of F.B.N Plc Vs A.G.F (2018) 7 NWLR (Pt. 1617) S. C. 121 at 161.

In the light of this, I hold that the Applicant in this case is entitled to compensation for the unlawful detention by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Having said this, I hold that the case of the Applicant succeeds. I hereby made the following orders:-

a. The detention of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without bail is unlawful, illegal, oppressive unconstitutional and a blatant violation of Applicant Fundamental Rights to personal liberty.

b. The claimant is entitled to compensation which I fix at Three Million Naira (N3,000,000.00k) against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

c. The case against the 3<sup>rd</sup> Respondent failed and is hereby dismissed .

That's the judgment of the court reserved for today.

**APPEARANCE:**

Daniel A. Edeachi, Esq. with me O. P. Ezebuwa, Esq. for the Applicant.

The Respondents not in court.

Sign  
Hon. Judge  
14/02/2022