

**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/CV/3563/2021

BETWEEN:

SHEDRACH JOHN APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. NIGERIA POLICE FORCE
3. COMMISSIONER OF POLICE F.C.T COMMAND, ABUJA
4. ATTORNEY GENERAL OF THE FEDERATION AND
MINISTER FOR JUSTICE RESPONDENTS

JUDGMENT

DELIVERED ON 23RD MARCH, 2022

The Applicant in this case via a Motion on Notice brought pursuant to sections 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Sections 293 and 296 (1) Administration of Criminal Justice Act, 2015, Section 2 of the Anti-Torture Act, 2017 and order 2 rule (1) (2) (3) of the Fundamental Rights Rules 2009 dated and filed 22nd December, 2021 seeking for the following reliefs:-

1. A declaration that the arrest and detention of the Applicant for Nine months by the Respondents; first at the 3rd Respondents cell at Anti-One Chance, Jabi, Abuja for one month and later transferred to the Special Anti-Robbery Squad (SARS) abattoir, Abuja's cell for eight (8) months from

March, 2020 to 17th day of December, 2020 by the 1st-3rd Respondents without any arraignment is unconstitutional and a gross violations of Applicant's Fundamental Rights guaranteed under Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

2. A declaration that the continuous detention of the Applicant at the Nigerian Correctional Service, Suleja Custodial Centre since the 17th day of December, 2020 and till date on the Order of the Mobile Court is an abuse of power, hence unconstitutional, null and void.

3. A declaration that the shooting of the Applicant as well as other degrading treatment meted on the Applicant by the Respondents while in their custody from March, 2020 to the 17th day of December, 2020 and till date is unconstitutional and unlawful.

4. An Order of Court releasing the Applicant from unlawful detention forthwith.

5. The sum of ₦50, 000,000 (Fifty Million Naira) only as general damages for breach of the Fundamental Rights of the Applicant.

6. The sum of ₦1, 000,000 (One Million Naira) only as cost of litigation.

7. And for such further Order or Orders that this Honourable Court may deem fit to make in the circumstances.

The grounds for the application are:-

1. The Respondents arrested the applicant and detained the Applicant from March, 2020 to the 17th day of December, 2020 amidst torture evidenced by the shooting of the Applicant by one Inspector Achong Atem Obi an officer of the 1st -3rd Respondents at the Police Anti-One chance

Station, when the Applicant insisted that he does not know anything about the alleged offence of Armed Robbery.

2. That while Applicant was in their custody, he was paraded before newsmen and the 1st-3rd Respondents were in search of evidence against the Applicant, there was no arraignment, no Order of competent Court or remand Order contrary to Sections 293 and 296 of the Administration of Criminal Justice Act, 2015, Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999(as amended).
3. The Applicant was remanded at the Suleja Custodial Centre by the Mobile Court sitting at Special Anti-Robbery Squad (SARS) abbatoir, Abuja on the 17th December, 2020 and has been there till date.
4. The Applicant is entitled to compensation/exemplary damages according to Section 35(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

It is supported by a ten (10) paragraphs sworn affidavit deposed to by one Isaac Mazo, they rely on all the paragraphs thus:-

1. That I am a Litigation Secretary in the law firm of Festus Akpoghalino and Co, Wuse II, Abuja.
2. That I am conversant with the facts of this case by virtue of my position.
3. That I have the consent and authority of the Applicant and my employers to depose to this affidavit in support.
4. The 1st Respondent is a statutory creation and the administrative head of the Nigerian Police Force with

headquarters at the 2nd Respondent's office situate at Force Headquarters, Louis Edet House, Abuja.

5. The 2nd Respondent is a juristic person with office situate at Force Headquarters, Louis Edet House, Abuja.

6. The 3rd Respondent is the administrative head of the 1st and 2nd Respondents in Federal Capital Territory command with office at opposite old C.B.N, Area 10, Garki, Abuja.

7. The 4th Respondent is the Chief Law Officer of the Federation With office situate at Plot 71B, Shehu Shagari Way, Maitama, Abuja.

8. That on the 17th day of December, 2021 at about 4:30 PM, I was informed by Festus Akpoghalino Esq Counsel to the Applicant in Chambers of the following facts, which I verily believed as follows:

- i. That on the 16th November, 2021, he went to Nigeria correctional Center at Suleja to see the Applicant and other persons who were arrested and detained awaiting trial and the Applicant narrated his ordeal to him and also informed me that:
- ii. The Applicant was arrested sometime in March, 2020 by the officials of the 1st-3rd Respondents and detained first at Jabi-One Chance office for one (1) month and later transferred to the Respondents Special Anti-Robbery Squad (SARS) cell at abattoir, Abuja where he was detained from the month of April, 2020 -17th December, 2020(nine months).
- iii. The 1st-3rd Respondents kept the Applicant in their custody for nine(9)months and three(3) days without any arraignment or court order.
- iv. The Applicant was kept in custody at the pleasure of the 1st-3rd Respondents without trial contrary to Sections 293

and 296 of the Administration of Criminal Justice Act, 2015, without an arraignment, Order of court or remand order.

- v. There are Courts within a radius of forty (40) kilometers and from the Respondents detention facilities.
- vi. The Respondents deliberately kept the Applicant in their custody amidst torture and in search of evidence against the Applicant ultimately in breach of the provisions of sections 34 and 35 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 2 of the Anti-Torture Act, 2017.
- vii. In the course of the continued detention of the Applicant, the Respondents meted terrible psychological and physical tortures on the Applicant including the shooting of the Applicant in their desperate search of evidence and to take confessional statement under compulsion from the Applicant more particularly one Inspector Achong Atem Obi, an official of the Respondents who presented him and others for media display before newsmen with arms and ammunitions.
- viii. The mental and psychological tortures meted on the Applicant was cruel, inhuman and degrading treatment as well as media display were all calculated efforts at confusing the mind of the and/or undermine the dignity and morale of the Applicant.
- ix. The 4th Respondent is constitutionally vested with the enormous responsibilities of ensuring that the Applicant's fundamental rights are not breached or eroded howsoever by the 1st -3rd Respondents or any other person or authority, even as the Applicant was arrested and detained.

- x. The 4th Respondent shirked its responsibilities by not taking any step to cause the arraignment of the Applicant before any Court of competent jurisdiction, nor take steps in compliance with the provisions of Sections 293 and 296 of the Administration of Criminal Justice Act, 2015.
 - xi. The 4th Respondent implicitly by their inaction endorsed the continued detention of the Applicant as evidenced in the fact that since the Mobile Court which sat at Special Anti-Robbery Squad (SARS) facility at abattoir, Abuja ordered the Applicant's remand on the 17th December, 2020, the Applicant has been abandoned in Suleja Custodial Centre without any charge or arraignment.
 - xii. That the Applicant is entitled to compensation/exemplary damages from the Respondents.
 - xiii. That the Applicant has been reduced to a shadow of himself and this Honourable Court is his last hope.
9. That the Respondents will not be prejudiced if this application is granted.
10. That I depose to this affidavit in good faith and according to the Oath's Act 2004.

Attached also is a written Address in support of the motion on notice wherein, the applicant stated that:-

The Applicant was arrested by the officers of the Respondent sometime in March, 2020, and taken to the One-Chance office of the Respondents at Jabi, Abuja where he was detained till the 25th day of November, 2020 in the cell of the Respondents at Jabi amidst torture and degrading treatments of all sorts.

The Applicant was thereafter transferred to the Respondent's Special Anti-Robbery Squad (SARS) cell in abattoir where he was further tortured and subjected to inhuman and degrading treatment with Inspector Achong Atem Obi as his chief tormentor.

The Applicant spent nine (9) months i.e. from 25th March, 2020 to 17th December, 2020 without arraignment in Court or any Order of Court.

The 1st – 3rd Respondent then further took the Applicant to the Mobile Court which sat at the Special Anti-Robbery Squad (SARS) facility at abattoir on the 17th day of December to obtain a temporary Order of further remand and has been locked up at Suleja Custodial Centre and he has been there till date.

The Applicant's Counsel raised a sole issue for determination:

Whether the Applicant is entitled to the reliefs sought in this case.

In arguing the sole issue for determination, counsel referred the court to **Section 34 (1) of the Constitution of the Federal Republic of Nigeria provides:**

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) of the Constitution of the Federal Republic of Nigeria provides:

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 the procedure permitted by law.

Counsel submitted that the depositions in the affidavit to the fact that the Applicant was detained without trial from 22nd day of March, 2020 till 17th day of December, 2020, in paragraph 8 of the affidavit in support of the motion on Notice and the statement in support of this application.

It is counsel submission that the law is that where a person is arrested and detained for more than the constitutionally accepted period without justification in Law, the implication is that his Right to personal liberty has been breached and curtailed and it does not matter the length of the detention.

Counsel further submitted that once he is arrested and detained, the Constitutional provisions must be obeyed, when detained by the Police he is absolutely deprived of his liberty, signifying that the right to personal liberty has been violated. **ISENALUMHE V AMADI (2001) 1 CHR PG 461.**

Counsel submitted that in assessing any of the breach of fundamental Right the length of the detention is an aggravating factor, hence the Court has held that the length of detention is not material; the slightest infraction is actionable in law and worth protecting. He referred the court

to the case of **ALABOH V BOYES (1984) 5NCLR PG 830 AT 834 R2.**

Counsel further cited the Supreme Court in the case of **ODOGUN VS AG FEDERATION (1996) 6NWLR (PT 455) PG 508, and R6, defined fundamental Human Right thus:**

“A Fundamental Right is a Right guaranteed in the Nigerian Constitution and it is a Right which every person is entitled, when he is not subject to the disabilities enumerated in the Constitution, to enjoy by virtue of being a human being. They are so basic and fundamental that they are entrenched in a particular chapter of the constitution...”

Counsel stated that it will not be justice under the Constitution if a man arrested or detained upon reasonable suspicion of having committed any offence is brought to Court at the will of the Police or any Law enforcement agent or even tried in Court thereafter at the Police convenience. He cited the case of **ALHAJI ADAMU AKOKHIA VS COP LAGOS (1984) 5NCLR PG.836, R3. See also AUGUSTINE EDA VS C O P (1982)3NCLR, PG 219, R 1 AND 2.**

Also in **AUGUSTINEEDA VS COP (SUPRA)** the federal Supreme Court held thus:

“... when a person is arrested and detained in connection with allegation or reasonable suspicion of a crime and are actively pursuing

investigation of the matter, the duty of the Police in appropriate case is to offer bail to the suspect and/or bring him to Court under whatever Section of the CPA or Police Act 1967, the Police may purport to be acting”.

Counsel also stated that the Respondents after detaining the Applicant for a period of nine (9) months and three (3) days without arraignment, court order or remand order brought the Applicant unrepresented by a counsel before the Mobile Court which further remanded the Applicant since the 17th day of December, 2020 till now.

It is counsel contention that **Section 35 of the Constitution of the federal republic of Nigeria** provides that a suspect can only be legally detained for 24 hours and where there is no Court of competent jurisdiction within 40 kilometre radius; a period of 48 hours. Counsel submits that the Respondent is not exempted from obeying this vital provision of the Constitution.

He further stated that there are many High Courts in FCT where the Applicant can be arraigned timorously but they refused and/or neglected to do so, making the Applicant to languish in the respective brutal cells of the Respondents for nine (9) months and three (3) days.

Counsel cited the case of **NEMI VS AG LAGOS (1996) 6 NWLR, PT 452, PG 42, R1**, the Court held that:

“there is nothing in Section 30 (1) and Section 42 (2) of the 1979 Constitution to suggest that a

condemned prisoner may be inflicted with any form of act that may amount to torture or to inhuman or degrading treatment and therefore an infraction of Section 31(a) of the said Constitution as far as the applicant is concerned and may be held justifiable or without a remedy. To end the life of a condemned prisoner it must be done according to the due process of law, and the due process of law does not end with the pronouncement of sentence”.

In the case quoted above the supreme Court held that even a condemned prisoner cannot be treated anyhow not to talk of a person whose Right are still intact and presumed innocent by the law.

Counsel submitted that the rights of the Applicant are still intact, until the Court says otherwise; the practice of detaining persons beyond the legally prescribed period has become a culture of the Respondents in this Country. This practice should be deprecated by the Court, to ensure the flourishing of the rights of the citizens of this Country.

Counsel also cited the case of **ISENALUMHE VS AMADI (2001) 1 CHR, PG 461, the Court held thus:**

“The Police have the responsibility to enhance the quality of the liberty and the dignity of the federal Republic of Nigeria as guaranteed by the constitution. Where they fail in this task must not be allowed to work to the detriment

of law abiding citizens. Their failure must be checked timorously to enhance the principles and ideals upon which a free society is built. Nigeria is a free Country in democracy and air of freedom must be inhaled by the citizen in their unbridled enjoyment of the well-entrenched fundamental human Rights”.

Counsel further stated that the Respondents on the 17th day of December, 2020 after detaining the Applicant for nine (9) months and three (3) days instead of releasing the Applicant on bail having failed to obtain any evidence in proof of their case still went ahead to secure a remand order from a mobile court probably to buy more time and the Applicant has remained in custody since then.

The applicant urged the court to hold that the continued detention of the Applicant is not supported by any case law or statute and urge this honourable Court to declare that the continued detention of the Applicant is unconstitutional, oppressive and a flagrant abuse of power.

Also another important and crucial part of this Application relates to the breach of section 34(1) of the constitution of the federal Republic of Nigeria 1999 (as amended). The Section provides that 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.

It was deposed to the fact that the Applicant was arrested and detained by the Respondents from 22nd day of March, 2020 to the 17th day of December 2020 in paragraph 8

of the affidavit in support of this application and the statement in support of this Application thereof.

It is counsel submission that the Law provides that where it is found that any person is subjected to torture, inhuman or degrading treatment, the action will be declared illegal. He cited the case **ISENALUMHE VS AMADIN (SUPRA)**, the court held that harassing, arresting and detaining the applicant for **3 hours**, till after midnight, when he was granted bail, is a flagrant abuse of the constitutional rights of the Applicant and consequently the respondent were seriously lambasted and penalized in damages.

That the Constitution used serious words in this chapter, that is (1) torture (2) inhuman or (3) degrading treatment to connote the seriousness of the point at stake. The **BLACK'S LAW DICTIONARY, 2ND ED, defined TORTURE, as:**

“to inflict intense pain to body or mind for purpose of punishment or extract a confession or information or for sadistic pleasure”.

He humbly submit that, restraining the Applicant from enjoying his liberties in the Respondents cell coupled with a seemingly perpetual remand order under dehumanizing prison conditions without a definite period of arraignment cannot be said to receive the backing of the 1999 Constitution; a modern day Constitution, which tend to protect the right of innocent citizens of this country in a whole chapter.

The Court has given judicial definition of **DEGRADING TREATMENT** in the case of **ISENALUMHE VS AMADI AND ORS (2001) 1 CGHR, PG 458, (S. J. ADAH J.)** as follows:

“Reviling, holding one in up to public obloquy; lowering a person in the estimation of the Public, exposing to disgrace, dishonour or contempt”

He humbly submits that the Applicant was seriously disgraced and humiliated by the arrest and detention for nine (9) months and three (3) days like an already convicted criminal. He was paraded like a common criminal at the 3rd Respondent’s office along with other criminals with weapons he does not know where they came from before newsmen and his good will and reputation was greatly destroyed.

He also submits that arresting and detaining the Applicant for nine (9) months and three (3) days and further remand him on the order of the Mobile Court for indefinite period is to say the least cruel and barbaric, hence unconstitutional null and void and he urge this honourable Court to so hold.

On whether damages can be awarded by the court for breach of fundamental rights, counsel referred the court to Section 35(6) of the Constitution of the Federal Republic of Nigeria gives unrestricted power to the Court to award compensatory damages to the applicant, where the Court found that the fundamental Rights of any Applicant has been trampled upon or breached.

Applicant’s Counsel is praying the Court to award damages of **N50 million** only as general damages for violation of the fundamental rights of the applicant, psychological trauma and loss of goodwill.

He cited the case of **OKONKWO VS OGBOGU (1996) 5 NWLR, PT449, PG422, and R3**, where the Supreme Court held thus:

“Any trespass to the person of another, however slight gives a right of action to recover at any rate nominal damages. Even where there is no physical injury, substantial damages may be awarded for the injury to the man’s dignity or for discomfort or inconvenience. Where liberty has been interfered with damages is given to vindicate the Plaintiff’s Right even though he has not suffered any pecuniary damage. It is also not necessary for the Plaintiff to give evidence of damage to establish his cause of action or to claim any specific amount of damage. (See page 435, paras f-g)”

Furthermore the Supreme Court has enjoined Courts seised with cases relating to breach of fundamental Right to award punitive compensation to act as deterrent to other agencies of Government whose stock in trade is constant abuse of the Constitution.

He referred the court to the case of **SHUGABA V ABDULRAHMAN DAMAN (1982) 3NCLR, PG 928**. And the case of **ODOGU V AG FEDERATION (1996) 6 NWLR, PT 456, PG 508, AT511, (PG 519, and PARAS E-F)** the Supreme Court HELD:

“Where interference with a Right is of substantial Proportion and damages have been shown, it is erroneous to award in the name of Compensation an amount which is almost Contemptuous and derisory...”

Counsel submitted that there is no doubt that detention without trial for a period of nine (9) months and three (3) days under the harsh conditions enumerated in the affidavit in support of this application amount to breach of substantial proportion which may warrant comments from this honourable Court. He urge the Court to award substantial damages.

The learned counsel urged this honourable Court to uphold the argument of the Applicant Counsel for the following reasons:

- a.** The Applicant was detained for a period of nine (9) months and three (3) days by the Respondents without trial.
- b.** The Constitution provides for detention for only 24 hours or 48 hours as the case may be.
- c.** The mere fact of unlawful detention without trial is enough proof of torture, inhuman or degrading treatment
- d.** The indefinite order remanding the Applicant in the custody of the Suleja Custodial Centre till date is excessive and has no legal basis.
- e.** The Constitution Presumes the Applicant innocent until declared or proven guilty in a competent Court of Law

f. Damages are natural Consequences and penalty imposed by The Constitution for breach of fundamental Right (Section 35(6) of the Constitution and ODOGU V AG FED (Supra)

Counsel also urges this honourable Court to grant the reliefs sought by the Applicant.

I have carefully perused the applicant prayers as captured on the face of the motion paper and all the declaration 1 – 7 sought . the grounds of the application was clearly spelt out 1 – 4.

It's equally supported by a 10 paragraphs sown affidavit by one Isa'ac Mazo of 28 Blantyre Street, Wuse II Abuja relying on all the deposition therein.

The applicant also filed a statement of fact in support also the reliefs sought and a written address.

It's my humble view having considered the submission of the Applicant counsel that "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 See S. 34(1) of 1999 constitution.

But the situation changes when a person is been alleged of committing an offence of which as a result is arrested and detained for the purposes of conducting investigation. It's usually depend on the gravity of the allegation, or that premise, the right of an individual can be detailed and he has no right to claim of his human right been breaded. The law has permitted the law enforcement agency to do this job thoroughly without been hindered.

On that basis, no claim of any damage for any kind can be entertained by court provided the detention is within the ambit of the law.

In conclusion, I hold that the reliefs sought by the applicant are of no moment and same are hereby refused accordingly.

APPEARANCE:

Uche Onyefuna, Esq. for the Applicant

The Respondents are absent in court.

Sign
Hon. Judge
24/03/2022