

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON THURSDAY 10TH DAY OF FEBRUARY, 2022

BEFORE HIS LORDSHIP HON. JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 8 MAITAMA, ABUJA

SUIT NO: FCT/HC/CV/1234/21

**IN THE MATTER OF AN APPLICATION BY IBRAHIM ISHAKA FOR THE
ENFORCEMENT OF HIS FUNDAMENTAL HUMAN RIGHTS**

BETWEEN:

IBRAHIM ISHAKA APPLICANT

AND

1. STATE SECURITY SERVICE
2. ATTORNEY GENERAL OF THE FEDERATION.
AND MINISTER OF JUSTICE

} RESPONDENTS

JUDGMENT

I should start by remarking that the identity and status of the Applicant could not be ascertained from the totality of the processes filed to commence the present fundamental rights enforcement action.

However, the summary of his case, purported to have been told on his behalf by his father, **Alhaji Salihu Mohammed**, is that, on 16th March,

2021, he was arrested by the officers of the 14 Respondent of the premises of **Madrida Hotel, Runji, Zuba, FCT**; and that ever since the date of his arrest up until 21st June, 2021, when the instant application was filed, the 1 Respondent had continued to incarcerate the Applicant, without Court order; without relatives and Solicitors being granted access to see him; and without prosecuting him for the commission of any criminal offence.

Being aggrieved by the 1st Respondent's purported action, the Applicant has approached this Court, vide Motion on Notice filed on 21/06/2021, for the enforcement of his fundamental rights; and by which he claims against the Respondents, the reliefs set out as follows:

- 1. A declaration that the Applicant's arrest and continued detention by the Respondents since on the 16th March, 2021 at the Madrida Hotel, Runji, Zuba, Federal Capital Territory, Abuja, and till date at the State Security Service, Federal Capital Territory (Asokoro) Command is in contravention of the provisions of section 35 of the Constitution of the Federal Republic of Nigeria, 199 (as amended).**
- 2. An order releasing the Applicant from the Respondents custody or/and unlawful detention forthwith.**
- 3. Exemplary damages in the sum of N200,000,000.00 (Two Hundred Million Naira) only against the Respondents for the breach of the Applicant's fundamental rights.**

4. And such further orders as this Honourable Court shall deem fit to make in the circumstances.

In response to the originating motion on notice, the 1st Respondent filed a Counter Affidavit on 20/09/2021, in which it completely denied having the Applicant in its custody.

Again, in response to the order made by this Court on 13/07/2021, mandating the 1st Respondent to admit the Applicant to bail pending the determination of the substantive originating motion; and deposing to an affidavit of compliance thereof as ordered by the Court, the 1st Respondent caused an affidavit of compliance to be deposed to on 28/07/2021, whereby it again stated unequivocally that the 1st Respondent does not know the Applicant; and that he was not in its custody.

Following this, the Applicant, through the office of his Solicitors, deposed to a further affidavit in support of the originating motion on 24/11/2021, whereby it is deposed that the 1st Respondent lied when it maintained that the Applicant is not in its custody. Purporting to debunk the 1st Respondent's contention, the deponent of the further affidavit attached thereto a communication received by the Applicant's solicitors from the National Human Rights Commission (NHRC), which communication seemed to have thrown light on the whereabouts of the Applicant. I take liberty to reproduce the relevant portions of the said letter as follows:

"2. I am further directed to inform you that, your clients were arrested on allegations of snatching motorcycles and selling

same to armed bandits and terrorists operating in the North West and North East Regions of the country.

3. Consequently, your clients were transferred to Kebbi State and arraigned before a Birnin-Kebbi Chief Magistrate Court, and are currently serving their various prison terms at the Nigerian Correctional Service Center, Birnin-Kebbi."

Now, from the content of the said letter, written by the **National Human Rights Commission (NHRC)**, on 22nd September, 2021, to **C. I. Okoye, Esq.**, of learned counsel for the Applicant, some essential facts emerged, namely:

- 1. That the Applicant had been transferred to Kebbi State, outside the jurisdiction of this Court, convicted of terrorism-related offences.**
- 2. That the Applicant is already serving prison sentence in Birnin-Kebbi, Kebbi State.**

It is to be noted that there is nothing in the letter under reference stating categorically which security agency arrested the Applicant or that it was the 1st Respondent that arrested him. It is also not disclosed in the letter where the Applicant was arrested and on what date he was transferred to Kebbi State.

Therefore, on the basis of the materials placed before the Court by the Applicant's learned counsel, there are no concrete facts to establish that the Applicant was indeed arrested by the 1st Respondent. I so hold.

Again, by the Applicant's own showing, he is no longer within the jurisdiction of this Court. There is also nothing to show, even if the Applicant was arrested within the jurisdiction of this Court, for how long he was detained within jurisdiction before being transferred to Kebbi State. It therefore becomes speculative to situate the Applicant's cause of action in this suit.

One would have expected the Applicant's solicitors, upon receiving the communication from the **National Human Rights Commission (NHRC)**, supra, which disclosed the Applicant's purported whereabouts, to follow that lead and undertake further inquiries and file further affidavit of their findings. Up until 25/11/2021, when the instant motion on notice was heard, no such further information was made available to the Court.

The provision of **s. 46(1)** of the **Constitution** is clear. Fundamental rights could only be enforced in a Court of competent jurisdiction within the State where the infringement occurred or perceived to occur. Furthermore, in line with the sacrosanct principle of the law of evidence that places the fundamental burden on the party that alleges to prove what he alleges, I must come to the conclusion here that the Applicant has not disclosed any cause of action whatsoever against the Respondents. This is for the reason that, one, it is not clearly established that it was the 1st Respondent that arrested and detained the Applicant. Secondly, it is also not established where the Applicant was detained and for how long, within the jurisdiction of this Court, if at all, before he was transferred to Kebbi State. What all of these facts, put together,

have shown is that the instant suit is speculative and vague. No Court of law makes a binding order on the basis of speculative and vogue cause of action. In Plateau State of Nigeria Vs. Attorney General of the Federation [2006] All FWLR (Pt. 305) 590, **Niki Tobi JSC** (of blessed memory). defines a speculative suit @page 647 thereof, as follows:

"A suit is speculative if it is based on speculation. A suit is speculative if it is not supported by facts or very low on facts but very high in guesses. As courts of law are not established to adjudicate on guesses but on facts, such actions are struck out."

See also Oyeyemi Vs. Irewole Local Government [1993] 1 NLWR (Pt. 270) 462; Kwara Co-operative Federation & Ors. Vs. Yusuf [2014] LPELR 23793(CA).

In the final analysis, I consider that it will be a waste of precious judicial time to proceed to determine the 1st Respondent's preliminary objection, hinged on the vexed point as to whether, being an agency of the Federal Government of Nigeria, this Court could exercise jurisdiction over it by virtue of the provision of **s. 251** of the **Constitution**. Since it is not ascertained that the Applicant's fundamental rights has been infringed within the territorial jurisdiction of this Court; or kept in the custody of the 1st Respondent, there is clearly no cause of action to adjudicate upon.

In totality, the Applicant's originating motion on notice. shall be and is hereby struck out.

OLUKAYODE A. ADENIYI

(Presiding Judge)

10/02/2022

Legal representation:

C. Nwaokorie, Esq. for the Applicant

U. Batife, Esq. - for the 1st Respondent

2nd Respondent unrepresented