

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 11TH DAY OF MARCH, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/2750/2021

BETWEEN:

ONYEMALU EMEKA LAWRENCE -- } APPLICANT

AND

NIGERIA POLICE FORCE -- } RESPONDENT

JUDGMENT:

In this Suit predicated on Fundamental Rights (Enforcement Procedure) {FREPEP}, the Applicant – Onyemalu Emeka Lawrence instituted this action against the Nigeria Police Force for the enforcement of his Fundamental Right against the Nigeria Police Force claiming the following:

- (1) A Declaration that his arrest and continued detention since the 10th day of July, 2021 by the Respondent without being charged to Court or grant of Bail is illegal, unlawful, oppressive, unconstitutional and a violation of right of fair-hearing, dignity of his human person, personal liberty and freedom of movement. That action of the Respondent violates his Rights under S. 34 – 36 and 41**

of the 1999 Constitution of the Federal Republic of Nigeria.

- (2) An Order directing the Respondent to release him unconditionally from the detention.**
- (3) Five Hundred Million Naira (₦500,000,000.00) Compensatory and Exemplary Damages.**
- (4) Public apology to be rendered by the Respondent to him in two National Dailies and any other form(s) of reparation that the Court may decide to grant.**
- (5) He also wants an Order directing the Respondent to release all his properties and the goods belonging to his wife which were forcefully seized and kept at the Station of the Respondent at Ekwulobia.**

Grounds are listed below.

- a. By virtue of Section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended and Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules, any person who alleges that any of the provisions of Chapter 4 of the Constitution to which he is entitled to has been, is being or likely to be contravened in any state in**

relation to him may apply to the High Court in the State for redress.

- b. The Applicant is Nigerian citizens who are entitled to his fundamental rights to dignity of human person, fair-hearing, personal liberty and freedom of movement guaranteed by Sections 34, 35, 36 and 41 of the Constitution of the Federal Republic of Nigeria 1999 as amended, 2011.**

- c. The arrest of the Applicant and his continued detention by the Respondent from the 10th day of July, 2021 till date violates his fundamental rights to personal liberty, fair-hearing, dignity of human person and freedom of movement, and consequently illegal and unconstitutional.**

- d. The Respondent has no authority whatsoever to detain the Applicant for the period of time above stated without complying with the constitutional and statutory provisions of the Laws of the Federal Republic of Nigeria.**

- e. The Respondent cannot exercise their power outside the provision of the Law and thus the arrest and detention of the Applicant must follow due process and procedure set down by the Constitution of the Federal Republic of Nigeria 1999 as amended and other relevant statutory provisions.**

- f. The Applicant who has been detained by the Respondent for over two (2) months without any charge brought against him before any Court is constitutionally entitled to be released either on bail or unconditionally.**
- g. The Applicant is constitutionally entitled under Section 35 subsection (6) of the 1999 Constitution of the Federal Republic of Nigeria as amended (2011) to the payment of compensation and public apology from the Respondent for the gross violation of his Rights to dignity of human person, personal liberty, fair-hearing and freedom of movement.**

In the Written Address the Applicant raised two (2) Issues for determination which are:

- (1) Whether his Fundamental Rights have been violated by the Respondent in this case.**
- (2) If Issue No. 1 is in the affirmative, whether he is entitled to damages and public apology.**

On Issue No. 1, he answered the question in the affirmative. That the Respondent detained him in Awka, Anambra State and later at FCIID Detention Facility Abuja since 10th July, 2021 till date of filing the Suit without charging him to Court. Hence this application to seek redress as he is doing against the Respondent. That action of the Respondent violated his extant Right under CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria as amended particularly S. 34 – 36. As well as Article 5 & 6 African

Charter on Human and Peoples Right. That his extant Rights were violated in the way and manner he was arrested and detained by Respondent for a period of over two (2) months without any justifiable reason. That Court is enjoined to ensure that citizens are secured and protected. That his right has been brazenly and grossly infringed upon. He referred to the cases of:

**Ekpu V. Attorney-General of the Federation
(1998) 1 HRLRA 421 Paragraph A**

**Ubani V. Director DSS
(1991) 11 NWLR (PT. 129)**

**Fawehuin V. Abacha
(1996) 5 NWLR (PT. 446) 198**

That the Respondent failed to charge him to Court. Rather they took him from Awka to Abuja FCIID in violation of the Constitution. That there are Courts with 40km radius from the place where he was detained. But Respondent had kept him in their custody for over two (2) months preceding the filing of this Suit on 21st October, 2021 in total violation of the extant provision of the Constitution.

On Issue No. 2, he submitted that he is entitled to award of damages for the said infringement of his Rights as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria and African Charter on Human and Peoples Right. He relied on the cases of:

**Yahaya V. NPF Plateau State Command
(2018) LPELR – 46-45 (CA)**

Arulogun V. Commissioner of Police Lagos & Ors

(2016) LPELR – 40190 (CA)

That he has established that his Rights were infringed by action of the Respondent and as such he is entitled to compensation in form of damage. That the continued detention without charging him to Court violates his Right. That trespass to his person no matter how light gives him right to action in his case. He referred to the case of:

Arulogun V. Commissioner of Police Lagos Supra

That S. 35(6) provides for compensation and that he is entitled to be compensated for the violation of his Right. He referred to the cases of:

Bello V. Attorney-General Oyo State Supra

Chinedu Eze V. Inspector General of Police & 4 Ors

**Julius Berger V. Inspector General of Police & Ors
(2018) LPELR – 46127**

That because of the detention he had suffered injury, loss of business and untold hardship, and embarrassment suffered in the cause of the Detention. He urged Court to hold that the Respondent has grossly violated his Right by their arrest and detention.

COURT:

The Respondent was served but they did not file any Counter to challenge the Application. Notwithstanding the fact that the Respondent did not file any application to challenge this Suit, the Court will analyze the fact before this Court to determine if actually the action of the Police violated the Rights of

the Applicant. This is because it is incumbent on an Applicant to establish that his Right has been, is being or had been violated.

To start with, the Court had ever, particularly from the time of Constitution and advent of the FREP Rules, reiterated that the Police has a right under the law to arrest, detain, interrogate and investigate anyone who has or is about to or had committed or is suspected to have committed a crime.

The Constitution has provided that the Right of a citizen is limitless. But that same Constitution provides under **S. 35** that the Right of a citizen can be tampered with following a due procedure permitted by law. Also, the Constitution had provided that the right of a citizen to own property is almost limitless. But that same Constitution provides that a person right to own property moveable or immovable can be tampered with, where such temporal tampering is for the purpose of investigation. See **SS. 35(1) and 442(k) of the 1999 Constitution of the Federal Republic of Nigeria as amended.**

In this case, based on the statement in support of the application as well as the Affidavit particularly **paragraph 4 (a)** it stated thus:

That on the 10th July, 2021 a team of Armed Policemen stormed his office (- office of the Applicant) at Ekwulobia in Anambra State and arrested him on allegation of misappropriation of fund and criminal breach of trust levelled against him by one Joseph Eze Okafor of Jezco Oil Limited.

From the above, the reason for the arrest and detention of the Applicant is well known – misappropriation and criminal breach of trust. Again, the above paragraph also indicated the name of the person who made the allegation that triggered the arrest of the Applicant. His name is Mr. Joseph Ezeokafor of Jezco Oil Limited.

It is a known fact that the Police under S. 20 Police Act has power to investigate crime. Misappropriation and breach of trust are crimes which the Police is empowered to investigate. So the act of the Respondent in arresting and detaining the Applicant on allegation of the said crime is in order legally and constitutionally.

Again, the Constitution provided that a person arrested must be informed of the purpose and reason for the arrest. That was done going by the said **paragraph 4 (a)** of the Affidavit in support. Police informing the Applicant of the reason of his arrest was also done within the statutory power of the Police under the Law and Constitution. That action is also constitutional.

The Police have the right/power to detain person beyond the 48 hours Rules if the investigation is not completed with 48 hours. See the provision of the Constitution **S. 35 (4)**.

The allegation that Police seized some of the properties of the Applicant is legally lawful going by the provision of **S. 44 (2) (k) of the 1999 Constitution of the Federal Republic of Nigeria** as amended.

From all indication the properties were seized because of the purpose of investigation of misappropriation and criminal breach of trust alleged against the Applicant. Police has a right to do so.

S. 44 (2)

Nothing in this Section shall be construed as affecting any general law relation.

2 (k)

Relating to the temporary taking of possession of property for the purpose of any examination, investigation or inquiry.

Again, the Plaintiff Counsel in his submission had informed this Court on record that the Respondent had charged the Applicant to Court on the 14th October, 2021. That is within three (3) months of the said arrest and detention. The action of the Police in that regard is also within the ambit of the law and their statutory duty too. It is in compliance with the provision of **S. 35 (4) (b) of the 1999 Constitution of the Federal Republic of Nigeria** as amended.

All in all, can it be said that the Respondent violated the Rights of the Applicant and that he is entitled to compensation and public apology?

It is the humble view of this Court that the Respondent DID NOT violate the Rights of the Applicant. The Respondent acted within their statutory power under the Constitution and the Police Act.

The Applicant is not entitled to any compensation because the Respondent did not violate his Rights. Besides, compensation is paid when and if an Applicant had established that his Right has been violated. Again, the Applicant is not entitled any apology because apology is earned and applicable where a person's Right has been violated. In this case, the Applicant's Right was not violated as alleged. So this Court hold that he is not entitled to any compensation in form of damages or public apology.

The application lacks merit. It is therefore DISMISSED.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2022 by me.

**K.N. OGBONNAYA
HON. JUDGE**