

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 21ST DAY OF JANUARY, 2022

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

JUDGE

SUIT NO. FCT/HC/CV/504/21

BETWEEN:

PASTOR BABATUNDE ISAIAH ADEGBOLA -----APPLICANT

AND

- 1. COMMISSIONER OF POLICE FCT..... DEFENDANTS**
- 2. DEPUTY COMMISSIONER OF POLICE (SCIID)**
- 3. INSPECTOR MATHEW (SCIID)**
- 4. MR.OGBUNA OKPOSIA**

JUDGMENT

In this Suit predicated on Fundamental Rights Enforcement Procedure Rule the Applicant Pastor Babatunde Isaish Adegbola on the 19/2/21 Institute this Suit against the Commissioner of Police, Deputy Commissioner of Police (SCIID), Inspector Mathew and Mr. Ogbuna Okposia claiming the following Reliefs:

1. An Order for the enforcement of his fundamental rights to personal liberty, life, freedom of movement and dignity of person.

2. A Declaration that the constant harassments, threat to Arrest and detention, arrest and detention, threat to bring about a trump up criminal complaint against the applicant by the 1st -3rd Respondent at the instigation of the 4th Respondent is tantamount to a violation of the Applicant's fundamental rights particularly my right to liberty.
3. A Declaration that the threat to arrest and detention of the Applicant by the 4th Respondent over a purely civil matter is tantamount to a violation of the Applicant's fundamental rights as guaranteed by the constitution of Federal Republic of Nigeria.
4. A Declaration that the investigation arresting detaining, inviting and harassing that Applicant on mere allegation of complaint of refund of monies from plots of land acquire on behalf of 4th Respondent upon instigation of his principal for the purpose of coercing the Applicant to make undertake to release/return his monies back to him is illegal, unlawful and ultra vires the power of the 1st -3rd Respondents.
5. An Order of injunction restraining the Respondents whether by themselves, their agents, associates nominees, servants or any other person whoever described and called

from arresting, harassing, detaining, inviting for question or in any other manner disturbing, curtailing or seeking to curtail and/or interrupting, interfering with the Applicant's right to personal liberty, property, life, freedom of movement and dignity of person in connection with the matter reported by the 4th Respondent which is purely a civil matter.

6. An Order declaring as null and void and of no effect the undertaking obtained by the police to pay the 4th Respondent as it was obtained by duress of arrest and threat.
7. Damages in the sum of Fifty Million Naira (N50,000,000.00) for unlawful threat of arrest and detention of the Applicant.
8. An Order of court mandating the 1st Respondent to issue an Apology in writing to the Applicant within 7 days of making the order for breach of his fundamental right as constitutionally guaranteed.

THE GROUNDS UPON WHICH THE RELIEFS ARE SOUGHT

- (a) The Applicant is a law abiding citizen of the Federal Republic of Nigeria and is entitled to enjoyment and exercise of all the fundamental rights enshrined and

guaranteed by the constitution of the Federal Republic of Nigeria subject only the exception, therein set out.

- (b) The men of the 2nd and 3rd Respondents have continued to harass and threaten to arrest, detain and humiliated the Applicant on account of refund of his monies from land transaction which the 4th Respondent tagged as “crime”.
- (c) The Respondents have arrested and detained the Applicant and have continued to harass intimidate and threaten the Applicant with further arrest and detain him upon a purely civil case.
- (d) There is no crime real or ostensible to warrant the investigation of the police in the matter.
- (e) The Applicant’s did not commit any crime warranting the incessant intimidation, harassment and routine threat of arrest and detention of the Applicant by the Respondents.
- (f) The applicant’s businessman is seriously distracted from his business activities due to the incessant harassment and threats of the Respondents against his persons and establishment.

- (g) The harassment, invitation, threat of arrest and detention of the Applicant and threat of arrest and detention of the Applicant by the 2nd and 3rd Respondents are unjustifiable and a flagrant violation of fundamental rights of the Applicant as there is no reasonable belief that he have or will commit a crime.
- (h) The applicant's is entitled to respect the dignity of his persons, personal liberty and privacy as guaranteed by the constitution off Federal Republic of Nigeria 1999 (as amended) also by the African Charter on Human and people's right (Ratification and Enforcement) Act laws of the Federation of Nigeria 2004.

He subsequently withdrew the case against 3rd Respondent. He supported the application with a 30 paragraph Affidavit.

According to the Applicant he is a real Estate/General contractor and a lawful agent of Mr. Ogbuna Okposia who was initially sued as the 4th Respondent.

He claimed he acquired some plots of land at Abuja on behalf of Mr.Ogbuna Okposia. The agreement was vide an oral instruction from Okposia. Okposia selected some plots and

demanded that Applicant should refund him for the other plots he Okposia did not take/accept. He refuses to see reason to accept those plots despite all entreaties from the Applicant. He threatened to deal with the applicant and compelled him to sign undertaking to repay N4.3Million meant for those plots of land or to forfeit his house where he live with his family. The Applicant pleaded for one month grace to enable him source the money to pay. But the Okposia refused. He mounted pressure on him using the 2 & 3 Respondents. He eventually gave N400 thousand to Okposia as part payment.

That was done at the office of the Police at the Lugbe Police Station. He alleged that he was arrested and detained upon his honouring of the invitation by the 1-3 Respondent at Lugbe Police Station. That some hefty Policemen came to the Hotel room (No.356) where the Okposia was lodging and threatened and threatened to whisk him away. But his Counsel-Nureni Sulyman Esq pleaded with Okposia. He was released and but was compelled to sign another undertaking to pay the money within one week of signing the said undertaking which he alleged was forcefully extracted from him at the Lugbe Police Station.

That Okposia had employed the machinery of the 1-3 Respondents to arm-twist harass and

threaten him in respect of a matter that is purely contractual civil land transaction. That the Respondents have threatened to arrest and detain him unless and until he refunds the said monies for the purchase of the said plots of land.

That he has not committed any offence that warrants any investigation by 1-3 Respondents. That he now lives in fear and had been unable to attend his official duties. That by their action the Respondents have violated the extent fundamental rights and that they are further set to violate those rights.

In the Written Address he raise 2 Issues for determination which are:

“(1) whether or not 1-3 Respondents are debt collecting Agents having regards to the powers of the Police under S.1-69 Police Act particularly S.4 of the Police Act.”

“(2) whether his fundamental Rights to personal liberty freedom of movement, life and dignity of his person have been breached and whether this Court ought not intervene by an order of Injunction against the Respondents.”

He submitted as follows: answering the question in Affirmative that his claim falls within the

purview of **Ss. 34,35, 36, 41 and 46 CFRN 1999 as amended.**

That debt recovery is not part of the duties of the 1-3 Respondents. That 1-3 Respondents acted ultra vires their powers under the S. 4 Police Act and therefore had violated his fundamental rights.

That the Petition against him was predicated upon his default in repayment of money to Okposia who he initially sued as the 4th Respondent and who was his principal. That there was no criminality in the transaction. He relied on the following cases.

MCARENS VS. JEMMINGS (2003) FWLR (PT.154) 528

AFRI BANK VS. ONYIMA (2002) 2 NWLR (PT.858)654 R.9 PG 680

OSOL VS BALOGUN 38 WRN 150

That since the transaction is a civil matter it is illegal and unconstitutional for the Police to have meddle which resulted into violation of his fundamental right. That police is therefore liable. He urged the Court to intervene in accordance with provision of **S.46 1999 CFRN as amended.**

That his arrest was uncalled for as there was nothing to investigate by 1-3 Respondents that necessitated his arrest, detention and interrogation and invitation by the 1-3 Respondents. He referred to Order II R 1 FREP Rules 2009.

FRN VS. IFEGWU (2003) 15 NWLR (PT.113) 216-217 PARA C-B

FRN VS UDENSI IFEGWU SUPRA

That 1-3 Respondents had no right to meddle in this case as they did. That the then 4th Respondent Okposia had threatened to use the 2-3 Respondents and other Law Enforcement Agencies to arrest and detain him harass and intimidate him. That the continued invitation and interrogation by Respondents violates his rights as there was no reasonable suspicion that he has committed any criminal offence. That action of the Respondents is contrary to **Article 5 African Charter on Human and Peoples Right**. He urged Court to grant his Reliefs as sought.

ON ISSUE NO.2- he submitted that he has not committed any crime known to law. That the action of the Respondents is ultra vires as they have no right under the law to arrest and detain him or investigate him. That their action violated his extant right under the law and Constitution

especially the provision of **Ss. 34, 35, 41 1999 CFRN and Article 4 -6 12 and 14 African Charter on Human and Peoples Right**. That he is entitled to enjoy the said Right under the Constitution.

That he acted in good faith in the business with the consent of his principal-Okposia that action of the Respondents infringed on his right. That he is entitled to the claim of Damages against the Respondents. He urge Court to grant all his reliefs.

Upon receipt of the Application the 1-3 Respondents filed a Counter-affidavit of 24 paragraphs deposed to by the 3rd Respondent who is the IPO in the case at Lugbe Police station. They attached 4 documents in support namely, Letter of Petition, Dud cheques issued by Applicant Exhibit NPF 1 & NPF 2 Respectively. They also attached Bail Form marked as Exhibit NPF 3 series. Also attached in support of the Counter Affidavit was the Letter withdrawal of the Complaint/Petition against the Applicant addressed to the 1-3 Respondents. It was marked as Exhibit NPF4.

The respondents denied in paragraph 13-29 of Affidavit of Applicant. They denied any knowledge of the transaction where the Applicant was compelled to pay the said amount-paragraph 9. They also denied paragraph 13 on allegation that

Applicant was detained for 5 days as they claimed. That Applicant did not spend even up to 24 hours in detention as he was released that same day as seen in Exhibit NPF3. That bail was granted to him and that he never was rearrested or threatened to be rearrested. That he was not denied access to his medication as he never complained of any ill-health. That 1-3 Respondents had no special relationship with Okposia. That Applicant was never handcuffed.

By the evidence in NPF 1 & 2 the matter Respondent investigated on was a Criminal matter and not civil matter as the Applicant falsely claimed. That the Petition against the Applicant was not in bad faith and that applicant was never searched by Respondents. That 3rd Respondent never threatened to detain the Applicant as he allegedly claimed.

That Respondents' never put Applicant's life in danger in the cause of his invitation to their station upon receipt of the Petition/complaint against Applicant. That since the Okposia withdrew the complaint/Petition against the applicant, the 1-3 Respondent never invited the applicant as they have no Counsel to do that. That the matter is not civil in nature as the issue is on issuance of dud cheque which is a criminal offence.

That from investigation it was obvious that the applicant committed offence of criminal breach of trust, cheating, obtaining money by false pretence and dishonestly issuance of a Dud cheque, all of which are criminal offences.

That action of the Respondent was not a breach of the fundamental right of the Applicant. The Respondent also attached letter of invitation written by 2nd Respondent to the Applicant on the 15/12/2020.

In the written address in support of the Counter affidavit, the 1-3 Respondents raised 2 issues for Determination which are:

“1. Whether 1-3 Respondents in performance of their statutory duties have powers to investigate, arrest and prosecute the Applicant where he is reasonably suspected to have committed an offence.”

“2. Whether Applicant has proved a breached of his fundamental Right in accordance with CAP 4 1999 CFRN as amended and entitled to the Reliefs sought.”

ON ISSUE NO.1 –He submitted and they answered the question in the affirmative. That as office saddled with Constitutional and statutory powers they have power investigate arrest, detain

offenders and protect lives and property. They referred to S.214, 215 & 216 1999 CFRN as amended S.4 & 232 Police Act. They also referred to the case of:

FAWEHINMI VS. IGP (2007) 7 NWLR (PT.665) 481@504

That by Exhibit NPF 1 the petition of Okposia written to 1-3 Respondents they activated the statutory duties of the 1-3 Respondent to arrest and investigate and prosecute where necessary. They referred to paragraph 4 of their Counter Affidavit and Exhibit NPF 1 & NPF 2.

That the fundamental Right of the Applicant was not breached based on those Exhibits. They referred to the case of:

GBAJOR VS. OGUNBUREGUI (1961) ALL ANLR 853

FCMB VS. EHE (2008) 22 WRN 1

ONAH VS. OKENWA (2010) 7 NWLR (PT.1194) 512

That throughout the investigation the right of the Applicant was duly observed. That as can be seen in Exhibit NPF 3 Applicant was promptly released on bail after detention. They referred to the case of:

**ISHOLA ABDULLAHI VS. OLUSEUN KOMOLAFE
& ORS (2019) LPELR- 46519 (CA)**

That the filing of the suit by the Applicant is premature. They urged Court to so hold.

ON ISSUE NO. 2- THE 1-3 Respondent submitted that Applicant has not put material facts before this Court to show that his right was violated by the 1-3 Respondents.

That his evidence is inconsistent all geared to deceive and mislead the Court. He was not able to prove that his right was breached by the 1-3 Respondents without any justification. They referred to case of:

**FAJEMIROKUN VS. COMMERCE BANK (2009) 2
MJSC(PT.11) @140 PARA C.**

They also referred to the provisions of S.131 & 133 EA 2011. That it is the responsibility of the Applicant to establish that his right was infringed and not the Respondents. But that he has failed to disclosed that onus. That Court should therefore dismiss this application and refuse the Reliefs sought against the Respondents. That failure of applicant to place material facts before this Court in proof of this application is fatal to the application. They relied on the case of:

**OYEWALE SUNDAY VS. ADAMU SHEHU (1995) 8
NWLJR (PT.414)**

**DANGOTE VS. CSC PLATEAU STATE (2001) 9
NWLJR (PT.717) 132.**

That the Applicant is not entitled to the claims of Damages/compensation as sought as it is not granted as a matter of course. That unless the Applicant is arraigned before a Court of law and the Court finds, that the allegation against him does not border on a crime, he cannot say that the Respondents are harassing him or violated his right. They urged the Court to refuse the application and hold that the 1-3 Respondents did not violate the right of the Applicant and therefore dismiss the application for lacking in merit. They also urge the Court to award exemplary damages of N500 thousand Naira against the Applicant in favour of the 1-3 Respondents to serve as deterrent for this frivolous suit by the Applicant.

COURT:

In every matter predicated on Fundamental Rights Enforcement Procedure it is incumbent on the Applicant to establish the who, how, when, where and what extent the alleged right has been infringed. It is based on the facts and exhibit if any which are contained in the Affidavit such application it is unless and until the Applicant had

done so to the satisfaction of the Court that it can be said that such right has been infringed and the rights violated. Unless and until that is done and the Respondent is not able to establish that their action or inaction was done in line with their right and within the statutory boundaries of their duties that it can be said that such right was violated or infringed.

The onus starts from the Applicant and must be shifted and stuck with the Respondent before it can be said that an application is meritorious. So mere allegation of infringed fundamental right with a wishy-washy unsubstantiated fact does not establish infringement of fundamental right of an applicant.

Having summarized the stories of the parties for and against the application the question is has the Applicant been able to establish that his extant Rights were infringed by the 1-3 Respondents? Did Police-1-3 Respondents act *Ultre vires*, their right in the case as alleged by the Applicant and was their action outside the boundaries of their Constitutional line of duty? Is the issue in dispute a civil wrong as alleged by the Applicant or a crime as the Respondents are claiming, bearing in mind that there was a petition on a Dud cheque issued by Applicant. Is the Applicant entitled to the Reliefs sought?

Did the 1-3 Respondents infringe the right of Applicant bearing in mind that their action was triggered off by the petition written against Applicant by Okposia who later dropped the allegation against the Applicant and whose name the Applicant dropped as the 4th Respondent in this Suit.

Not necessarily answering the question seriatim it is the very humble view of this Court after analyzing the stories of the parties that the Applicant **WAS NOT ABLE TO ESTABLISH THAT HIS RIGHT WAS INFRINGED BY THE 1-3 RESPONDENTS.**

The 1-3 Respondents did not infringe the extant Right of the Applicant. Their Action is not ultra vires as they acted within their statutory boundaries of their duties. They acted following the due procedure permitted by law and the Constitution in that regard. The issue in dispute which triggered the action of the Respondents based on the Petition/complaint of Okposia is on a crime. It is not a civil matter as the Applicant alleged. It was on issue of Dud Cheque, breach of trust, and alleged cheating and not on a Contract. Any allegation on issue of a Dud cheque is a crime and the Respondent has the right under the Constitution and Police Act to investigate such allegation if reported to them by anyone. Again the

action of the 1-3 Respondents was based on the said complaint made by Okposia against the Applicant. The 1-3 Respondent did not started acting out of the blues. Their action is not and cannot tantamount to violation or breach of the Right of the Applicant. Again the Applicant for reason best known to him decided to remove/drop the name of Okposia as a Respondent in this case. That action is very strange though. It is imperative to also point out that 4th Respondent had along the way going by Exhibit NPF 4 withdrew the allegation against the Applicant. The applicant and the former 4th Respondent Okposia had decided in reciprocity variously forgave each other in the course of the debacle. The 1-3 Respondents cannot therefore be held responsible for the infringement of the right of the Applicant. Since their action was based on the complaint of Okposia and since they never took any other action against the Applicant after Okposia wrote to them stating he had dropped the charges against the Applicant. The Applicant having failed to establish that his rights were infringed by 1-3 Respondents is therefore NOT ENTITLED TO THE RELIEFS SOUGHT IN this Application. So this Court humbly holds.

The Applicant never mentioned that the complaint made against him was based on cheating

obtaining by false pretence and issuance of a dud cheque.

All these allegations are criminal offences. He did not deny that there was a written petition. He did not even mentioned that he was invited by 1-3 Respondents through his office as shown in the Exhibit NPF2 letter dated 15/12/2020 and the Petition dated 9/12/2020. All the issues raised thereon are criminal in nature. Again Police having invited him as stated in paragraph 1& 2 of Exhibit NPF2 thus:-

“we are investigating a case of criminal conspiracy, breach of trust, cheating, theft, issuance of dud cheque in which the above named staff of yours featured prominently.

In view of that you are kindly requested to release the said staff to be interviewed by named officer in charge on 17/12/2020 by 1000 hours”.

Meanwhile the letter was written by Police and captioned thus:

Invitation Letter

RE: Isaiah Adejbola

The Police inviting the Applicant in writing is in total compliance of the provision of the

Constitution in that regard. The action of the Respondent is in line with the law and in accordance with their Constitutional duty. That action is not a violation of the right of the Applicant. So the Court holds.

Also the Applicant was not specific about the dates, day and duration of his alleged arrest and detention. He deliberately eluded stating the days and month when the arrest and alleged detention for 5 days took place. It is clear that his account of the detention was froth with inconsistencies. In one breath he claimed he was arrested and detained for 5 days. He also stated that he was detained a second time without stating from which date and time and the duration of the detention, the arrest and detention the 2nd time.

The Police had attached evidence that bail was granted to the Applicant. He ever mentioned that after the so called detention he was granted bail and his brother stood as surety.

In the letter bail Application his brother wrote the offences. That further confirmed that the issue that took the Applicant to the Police was Criminal. Again there was no mention of land transaction in both the Exhibit NPF 3 and the Petition Exhibit NPF 1 & NPF 2.

Even the NPF 1 was on complaint of issuance of Dud cheque. The application, NPF1, was for Respondents to investigate the allegation and not to help recover the money. So also the Criminal Recognizance Form-Application for Bail was clear on the issue and reason for arrest of the Applicant. Granting of Bail to the Applicant was in line with the procedure laid down in the laws of our land in that regard. So Respondents acted within the ambits of the Law. Therefore they did not infringed on the right of the Applicant as alleged. It is strange that the Applicant did not state that the former 4th Respondent who petitioned him to the Respondents wrote a letter to withdraw the action and complaint against him on the 9/3/21. He gave the impression that the 1-3 Respondents acted at the instigation of the 4th Respondent –Okposia not until the 16/12/21 when his Counsel moved an application to withdraw the suit against the then 4th Respondent-Okposia who had since 19/3/21 withdrew the case against him at the office of the 1st Respondent Commissioner of Police. The Applicant did not establish that the 1-3 Respondents did anything or took any action after Okposia withdrew the allegation/complaint against him on 19/3/21. Beside since the 1-3 Respondents did not take any further action on the matter and the Applicant had withdrawn the

case against the 4th Respondent, there is no how the action and inaction of the 1-3 Respondents could amount to infringement of Applicants Right because one cannot put something on nothing and expect it to stand.

The withdrawal of the allegation against Okposia as it were invariably made the allegation against the 1-3 Respondents to fizzle into thin air. More so as their action before then was based on the complaint made against Applicant by Mr. Okposia and were done within the ambits of the law. Most importantly withdrawing the case against Mr. Okposia also means withdrawal of the whole case against 1-3 Respondents. After all the action of 1-3 Respondents was based on the allegation of Mr. Okposia made against the Applicant which he withdrew since march 2021.

As stated severally the action taken by the 1-3 Respondents was based on good legal ground. Their action was within the procedure permitted by law and in accordance with the powers of the police under the Constitution. Their action is therefore not an infringement of Applicant's Right.

Again there is a lot of disparity in the story of the Applicant as to the amount involved in the so called "civil contract" of sale of land. From the documents attached and facts in the Affidavit the

arrest and detention was based on allegation of commission of crime cheating etc. including issuance of dud cheque too. The Applicant did not deny this allegation. Even disparity in the amount in issue says it all about the character and person of the Applicant. This Court does not believe that his right was infringed. Besides he never established that it was breached. Again he did not tell the Court about the withdrawal of the case against him by the Okpasia.

He was elusive with facts on the allegation raised against him by the 1-3 Respondents in their Counter Affidavit. The 1-3 Respondents asserted and proved with credible facts and Exhibit NPF 1-NPF 4. This Court believed them. That is why the Court holds that the application lacks merit as the Applicants right was not violated.

This application is therefore dismissed. This is the Judgment of this Court delivered todayday of.....2021 by me

K.N.OGBONNAYA

HON. JUDGE