

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//2021

BETWEEN:

SAMUEL ANUOLUWAPO ETAJUWA } -- APPLICANT

AND

1. THE INSPECTOR GENERAL OF POLICE
2. ASSISTANT INSPECTOR GENERAL
OF POLICE, ZONE 7
3. INSPECTOR FASHOLA KOLADE
4. DSP ADETUNJI IBRAHIM
5. REMILEKUN PRISCILLA ETAJUWA } -- **RESPONDENTS**

JUDGMENT:

In this Suit predicated on Fundamental Rights (Enforcement Procedure) {FREPEP}, Samuel Anuoluwapo Etajuwa is seeking the following Reliefs against the Inspector General of Police, Assistant Inspector General of Police Zone 7, Inspector Fashola Kolade, DSP Adetuyi Ibrahim and Remilekun Priscilla. The Reliefs are the following:

1.A Declaration that his arrest by 1st - 4th Respondents over issue that is purely civil in nature and without Court Order is

unconstitutional, unlawful, null, void and constitutes a violation of his Rights to Personal Liberty and Freedom of Movement.

2. An Order of restraint on the 1st – 4th Respondents, their subordinates and privies from further arrest and invitation of the Applicant on the complaint and petition of the 5th Respondent on the issues which borders on civil matter without an Order of Court.

3. Fifty Million Naira (₦50, 000,000.00) damages for violating his Right.

That 1st – 4th Respondents violated his Right under **S. 34 – 35 & 41 of the 1999 Constitution of the Federal Republic of Nigeria** as amended.

That 1st – 4th Respondents acted at the behest of the 5th Respondent and arrested him without any just curie.

That he has not committed any criminal offence known to law to warrant his arrest and violation of his Right to Personal Liberty and Dignity of his person.

That he is entitled to damages in form of compensation.

He supported the application with Affidavit of 25 paragraphs. He attached 5 documents marked EXH A – E.

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

(1) Whether his Right to liberty and movement has been, is being or likely to be continually breached by the Respondents.

(2) Whether he is entitled to the Reliefs sought in this application.

On Issue No. 1, he submitted that the fact in the Affidavit and the Statement in support shows that his Right has been breached and likely to be continually breached by the Respondents. That he has complied with **S. 46 of the 1999 Constitution of the Federal Republic of Nigeria** as amended by applying to this Court to seek redress.

That he was arrested on a matter that is purely civil in nature and that the Respondents have no right to arrest him in that regard.

That there was no reasonable suspicion that he has committed or was about to commit a crime to warrant and justify his arrest by the 1st – 4th Respondents. He referred to **S. 32 (3) Police Force Establishment Act 2020**.

That the absence of Court Order or reasonable suspicion of commission of crime makes the action of the 1st – 4th Respondents illegal and unconstitutional. He relied on the case of:

**Agundi V. Commissioner of Police
(2013) All FWLR (PT. 660) 1247 (CA)**

That existence of threat of violation of one's Right is enough to activate the Fundamental Right action against violators. He referred to the case of:

**Min. of Internal Affairs V. Shugaba
(1982) 3 NCLR 915 @ 991**

He urged Court to hold that the 1st – 4th Respondents violated his Right.

On Issue No. 2, he submitted that he is entitled to damages based on the fact that the Respondents violated or threatened to violate his Right. He referred to **S. 46 (2) of the 1999 Constitution of the Federal Republic of Nigeria** as amended and urged Court to grant his Reliefs in the interest of justice.

Upon receipt of the application the 1st – 4th Respondents filed a Counter Affidavit of 14 paragraphs. They attached 2 documents – a Petition written to the 2nd Respondent by the 5th Respondent and the Police Legal Advise written to the Legal Unit of the Police Zone 7 Headquarters.

In the Written Address the 1st – 4th Respondents raised 4 Issues for determination which are:

- (1) Whether the alleged arrest and purported detention of the Applicant on the suspicion of having committed a criminal breach of trust, unlawful seizure and cheating amounted to breach of his Fundamental Rights.**
- (2) Whether the arrest of the Applicant upon a moral and legal complaint made to the Nigeria Police ultra vires the statutory powers of the Police and as such unlawful.**
- (3) Whether it is lawful for the Applicant having been lawfully arrested and immediately released to thereafter seek redress in Court restraining the Police from performing its statutory functions.**
- (4) Whether Applicant is entitled to the Reliefs sought.**

On Issue No. 1, they submitted that the arrest of the Applicant was lawfully made. They referred to **S. 35 (1) of the 1999 Constitution of the Federal Republic of Nigeria** as amended. That Applicant's liberty is not absolute. That arrest of Applicant was based on a petition or complaint by the 5th Respondent.

The petition was on allegation of cheating, criminal breach of trust and obtaining goods by false pretence. That the 1st – 4th Respondents set up an Investigation Team in compliance with **S. 35 (1) of the 1999 Constitution of the Federal Republic of Nigeria** as amended.

That the Respondents informed the Applicant of the reason for his arrest. That the Applicant was given chance to be heard as he made written statement to the Police and was released the same day. But he could not comply with the Bail condition immediately. That Bench warrant was procured for his further detention. He referred to the case of:

**Mittee V. A-G Federation
(2003) 2 CHR 463**

That 1st – 4th Respondents acted within the ambit of the Constitution and Police Act. That Applicant has the duty to prove that his Right was violated but has not done so in this case. That the arrest was justified and lawful. He relied on the case of:

**Commission of Police Ondo State V. Obola
(1998) WNLR (PT. 120) 13**

That Police action was based on the investigation that the Applicant has committed a criminal offence of breach of trust and cheating.

On Issue No. 2, the 1st – 4th Respondents submitted that the action of the Police was based on the complaint of the 5th Respondent made on the 2nd day of July, 2020 and that Police has a right and duty to look into the said complaint as they did. He referred to **SS. 214, 215 & 216 of the 1999 Constitution of the Federal Republic of Nigeria** as amended. That Police has power to maintain public order and public safety. He referred to **S. 4 Police Act**.

That the arrest was done in public good and in the interest of the public. That action of the Police was to determine whether there was a prima facie case established against the Applicant in the said Complaint/Petition.