

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 24TH DAY OF FEBRUARY 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. CV/2609/2021
BETWEEN

MR. JUDE OBASI ===== APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. STATE SECURITY SERVICE=====RESPONDENTS

JUDGMENT

The Applicant by an Originating motion filed on the 7th day of October filed this suit for the enforcement of his fundamental rights brought pursuant to Section 6(6) & Sections 34, 35, 36 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011, Order 2 Rules 1, 2, 3, 4, 5, & 6 of the Fundamental Rights Enforcement Rules 2009, Articles 4,5, 6, 7(b) and (d) of the African Charter on Human & Peoples Right (Ratification and Enforcement Act Cap 10 laws of the Federation 1990, and under the inherent jurisdiction of the honourable court praying for the following reliefs:-

- a) A DECLARATION that the arrest and the continued detention of the Applicant since the 31 day of March, 2021, till date, by the Respondents without being charged to Court or released on bail, is illegal, unlawful, oppressive and unconstitutional, as it violates the Applicant's fundamental rights to fair hearing, dignity of human person, personal liberty and right to freedom of movement as guaranteed by

Sections 34, 35, 36 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) 2011.

- b) AN ORDER OF THIS HONOURABLE COURT directing the Respondents to unconditionally release the Applicant from their custody forthwith.
- c) COMPENSATORY AND EXAMPLARY DAMAGES of N500,000,000.00 (Five Hundred Million Naira Only), against the Respondents, jointly and severally, for the gross violation of the Applicant's fundamental rights to dignity of human person, fair hearing, personal liberty and freedom of movement.
- d) AN ORDER OF THIS HONOURABLE COURT directing the Respondents to tender unreserved public apology to the Applicant in two National Dailies and any other forms of reparation that the Honourable Court may deem fit to grant.

The grounds upon which the reliefs are sought are:

1. That by virtue of Section 46(1) of the 1999 constitution (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.
2. That the Applicant is a Nigerian citizen who is 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.

3. That the arrest of the Applicant and his continued detention by the Respondents from on or about the 31st day of March, 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.
4. That the Respondents have 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.
5. That the Respondents 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.
6. That the Applicant who has been detained by the Respondents for a period of six months without any charge brought against him before any Court, is constitutionally entitled to be released unconditionally.
7. 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 Respondents for the gross violation of his rights to dignity of human person, personal liberty, fair hearing, and freedom of movement.

The facts that gave rise to this application is that the Applicant's house at Obiofia Nnewichi Nnewi, Anambra State, was on the 31st day of March, 2021, invaded by the operatives of the Respondents at the at about 2.45am. That the Respondents' operatives shot sporadically for about 30 minutes, before

they took the Applicant away and from the information available to the Applicant's relatives revealed that he was consequently transferred to the 1st Respondent's detention facility in Abuja, before he was subsequently transferred to the 2nd Respondent's detention facility at the Abuja Headquarters.

Attached to the application is an affidavit of 9 paragraphs deposed to Blessing Isoughie, a litigation Secretary in the law firm representing the Applicant. Attached to the affidavit are two exhibits which are photographs showing the Applicant recuperating from an eye surgery prior to the invasion marked as Exhibit A and a Video taken on the 31st March 2021 as Exhibit B.

Also filed is a written address wherein applicant's counsel raised two issues for determination thus;

1. Whether the applicant's fundamental rights have been violated by the respondents in the circumstances of this case?
2. If issue no.1 above is answered in the affirmative, whether the Applicant is entitled to damages and public apology?

Counsel arguing the issues submitted from the facts deposed to in the affidavit, the violation of the Applicant's human rights to liberty and dignity of human persons, in the instant case, is so pronounced in the way and manner the Applicant was arbitrarily arrested and detained by the Respondents, for over a period of six months without any lawful justification.

Submitted that it is the duty of this Honourable Court to protect the right of the Applicant even before it is being infringed upon, and more especially in the present circumstance, that the Applicant's rights have been so brazenly and grossly infringed upon by the Respondents.

Counsel submitted further that the arrest and detention of the Applicant took place where there is a Court of competent jurisdiction within a radius of forty kilometres, rather than charge the Applicant Court if he had committed any offence known to law, the Applicant was speedily transferred to the Respondents' Detention Facilities in Abuja, where he has been detained for over six months, in gross violation of his constitutionally guaranteed rights. Counsel urged the Court to hold that the Applicant have made out a case as shown in his affidavit evidence that his fundamental rights to fair hearing, dignity of human person, personal liberty and movement, all provided for under African Charter on Human and Peoples Rights under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011, were grossly violated by the Respondents and is therefore entitled to the reliefs sought.

Counsel relied on amongst others, the following case laws:

1. Anozie VIGP (2016) 11 NWLR (1524) 387 PGS 389-390 PARAS:2
2. Jim-Jaja Vs C.O.P. RIVERS STATE (2013) 6 NWLR (PT 1350) 225 Pg 230Para. 2
3. Duruaku v Nwoke (2015) 15 NWLR (Pt. 1483) 417 Pages 423 and 425 paras-2 and 5
4. Emeka V Okafor (2017) 11 NWLR (PT 1577) 410 Pg. 423 Para. 1
5. Adetona&Ors V Igele General Enterprises Ltd (2011) 7 NWLR (PT 1247) 535
6. Jim-Jam V COP (2011) 2 NWLR (PT 1231) 375 PG 382 PARAS: 6
7. Federal Republic of Nigeria v. Ifegwu (2003) 15 NWLR PT 848 at 133
8. GaniFawehenmi v. Abacha (1996) 5 NWLR PT 446 at 198

9. Ubani v. Director of State Security Services (1999) 11 NWLR PT 129.
10. Theresa Onwo v. NwaforOko&Ors (1996) 6 NWLR (Pt 456) 584 at 604
606
11. Awoyera v. Inspector General of police (2015) I NHRLR 58
12. Ekpu V. Attorney General of the Federation (1998) 1 HRLR (P421, Para
A)
13. Ondo State Broadcast Corporation v. Ondo State House of Assembly
(1985) 61 NCLR 333 at 337

The 2nd Respondent filed a Counter affidavit of 9 paragraphs deposed to by Esther Aluku, an employee of the 2nd Respondent. In moving the application, the 2nd Respondent's Counsel relied on the paragraphs in the counter affidavit and submitted that the Applicant has no cause of action against the 2nd Respondent as the Applicant is not in the custody of the 2nd Respondent. In the written address, Counsel raised two issues for determination as follows:

1. Whether from the totality of the facts of this case, the Applicant is entitled to the reliefs sought?
2. Whether or not the Applicant's affidavit in support of the originating motion offends the provision of Section 115(2) (3) and 4 of the Evidence Act 2011

Counsel arguing the issues raised submitted that the Applicant has failed to set forth facts that may have given him the right of action against the 2nd Respondent and as such robs this Court of jurisdiction to entertain this case against the 2nd Respondent as there is no evidence linking the 2nd Respondent to the breach of the applicant's right for this case to be sustained against 2nd Respondent.

Counsel further submitted that paragraph 5(m) of the Applicant's affidavit in support did not comply with Sections 115 (3) and (4) of the Evidence Act 2011 which requires that the particulars of the informant as well as the time, place, circumstance of the information provided shall be stated which was not complied with by the Applicant.

Counsel therefore urged the Court to hold that the Applicant's application lacks merit and should be dismissed.

Counsel relied on the following authorities amongst others:

1. OSENI OMOMEJI & OPS VS. JAMES OLAGUNJU KOLAWOLE & ORS (2008) 4 NWLR (part 1106) page 108 at 186.
2. UBN VS. UMEODUAGU (2004) LPELR 3395 (SC).
3. ONUKWUSI & ORS VS. THE REGISTERED TRUSTEES OF THE CHRIST METHODIST ZION CHURCH (2011) LPELR 2702 (SC).
4. A.G. FEDERATION VS. ABUBAKAR (2007) 10 NWLR (PT. 1041) 1 at pp 121 paras G – A.
5. MILITARY ADMINSTRATOR, BENUE STATE VS. ABAIHO (2001) FWLR (PT. 45) 606 at p. 616 paras E – F.
6. BAKARE VS. NRC (2007) 17 NWLR (1064) P.606 at 637.
7. CHEVERON NIG. LTD. VS. LONESTAR DRILLING NIG LTD (2007) 7SC (pt. 11) pg 27 at pg 33.
8. BULET INT'L (NIG) LTD & ANOR VS. OLANIYI & ANOR (2017) LPELR – 42475 (SC)
9. FRIN VS. GOLD (2007) 11 NWLR (1044) P. 1 at 18 – 19.

The Applicant filed a further affidavit and a reply on points of law which this court has considered.

The issue for determination is:

“Whether Applicant has proved that he is entitled to the orders sought.”

It is trite that in a case for enforcement of Fundamental Human Right the Applicant has the burden of proving that his Fundamental Human Right was breached or in danger of being breached. In **AMALE VS. SOKOTO LOCAL GOVT. (2012) ALL FWLR (pt. 618) 833** the Court held the that

“The correct approach in any claim for the enforcement of Fundamental Right is to examine the reliefs sought, the ground for such relief and the facts relied upon. Where the facts relied upon discloses a breach of the Fundamental Human Right of the Applicant as the basis of the claim, there is a redress through the Fundamental Rights (enforcement Procedure) Rules.”

From application before me, it is the duty of the Applicant to provide the Court with a full disclosure of material facts as failure to disclose same may deny an Applicant relief sought. While the 1st Respondent did not file a counter affidavit to the application, 2nd Respondent in its counter affidavit averred that Applicant is not in their custody and as such has no cause of action against 2nd Respondent.

Although learned Counsel to the Applicant tendered a video and pictures of the Applicant as Exhibits I am of the opinion that exhibits tendered are not enough to link 2nd Defendant to the arrest and detention of the Applicant. It is my considered view that Applicant failed to provide the Court with full disclosure material facts linking 2nd Respondent to the Applicant’s arrest and detention and I therefore hold that Applicant has failed to convince this Court to grant its prayers in respect of the 2nd Respondent.

As earlier stated, 1st Respondent although duly served did not file a counter affidavit. Where evidence is unchallenged and uncontroverted, the onus of proof is satisfied on minimal proof since there is nothing on the other side of the scale. See MOBIL OIL (NIG) LTD. VS. NATIONAL OIL AND CHEMICAL MARKETING CO LTD. (2000) 9 NWLR (pt. 671) page 44 @ page 52 paragraph H.

From affidavit in support of application, Applicant was initially transferred to 1st Respondent's detention facility in Abuja before his subsequent transfer to the 2nd Respondent's facility also in Abuja. Having held that Applicant failed to prove culpability of 2nd Respondent in the unlawful arrest and detention of Applicant, it is only reasonable for this Court to hold that Applicant is in custody of the 1st Respondent since the 31st of March, 2021. Any person who alleges that any of the provisions of Chapter IV of the Constitution has been, is being or is likely to be contravened in any state in relation to him may apply to the High Court to seek redress. Hence, when as in this case, Applicant alleges that his Fundamental Human Right has been infringed upon by the 1st Respondent and the 1st Respondent has not controverted nor challenged that fact, the Court is duty bound to make the proper orders to safeguard the Fundamental Human Right of the Applicant.

Consequently, this Court hereby makes the following orders:

1. I hereby declare that the arrest and the continued detention of the Applicant since the 31 day of March, 2021, till date, by the 1st Respondent without being charged to Court or released on bail, is illegal, unlawful, oppressive and unconstitutional, as it violates

the Applicant's fundamental rights to fair hearing, dignity of human person, personal liberty and right to freedom of movement as guaranteed by Sections 34, 35, 36 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) 2011.

2. That the 1st Respondent is hereby directed to unconditionally release the Applicant from their custody forthwith.
3. Compensatory and Exemplary damages in the sum of N5,000,000.00 (Five Million Naira Only), is hereby awarded against the 1st Respondent, for the gross violation of the Applicant's fundamental rights to dignity of human person, fair hearing, personal liberty, and freedom of movement.
4. That the 1st Respondent is hereby directed to tender unreserved public apology to the Applicant in two National Dailies.

Parties: Applicant absent.

Appearances: C. C. Emenari, esq., for the Applicant. A.M. Abass, Esq., for the 2nd Respondent. 2nd Respondent not represented.

HON. JUSTICE MODUPE OSHO-ADEBIYI
JUDGE
24/02/2022