

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 31ST DAY OF MAY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/2470/2022

BETWEEN

- | | | |
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| 1. ASO SAVINGS AND LOANS PLC
2. BILKISU KURE
3. AMAWU BEN | } | APPLICANTS |
|---|---|------------|

AND

- | | | |
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| 1. NIGERIA POLICE FORCE
2. INSPECTOR GENERAL OF POLICE
3. COMMISSIONER OF POLICE, FCT ABUJA | } | RESPONDENTS |
|---|---|-------------|

JUDGMENT

By Originating Motion (on notice) dated on the 24th September, 2021 and filed on 27th September, 2021, the Applicants herein have brought the instant application before this Honourable Court pursuant to the provisions of Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Order 3 Rules 1 of the Federal High Court Rules praying for the grant of the reliefs sought in the accompanying statement. Via the Statement dated 24th September 2021 which accompanied the application, the Applicants seek the following reliefs;

- a) A Declaration that the manner in which the Applicant's staff were severally invited, harassed and intimidated by men and officers of the Respondent on 22/05/2017 in broad day light like an irresponsible institution and in the full glare of members of the public by the 3rd Respondent OVER A PURELY CIVIL LAND TRANSACTION when the Applicants have not committed any criminal offence, was a*

fragrant abuse of the Applicant's fundamental Rights to the dignity of person and institution, to their personal liberty, and to freedom of movement, and to privacy as guaranteed him under section 34, 35, 37 and 41 of the constitution of the Federal Republic of Nigeria 1999 (as amended), and article 4, 5, 6 and 12(1) of the African Charter on Human and Peoples Right, Cap, 10 LFN, 2004.

- b) *A Declaration that the arrest and whisking away of the 2nd and 3rd Applicants to the Federal Capital Territory Police command at Area 10, Garki Abuja office where they were interrogated, detained from 10am to 5pm in the evening by the Respondent's officers, denying them access to her drugs and food for over 6 hours, without lawful cause at the active instigation of one Rilwan Lukeman and Abdulrahman Baran Yusuf, who are Claimants to a parcel of Land located at Zuba FCT Abuja, despite the pending suit filed by them and pending at Zuba High Court, constitutes unlawful imprisonment, which infringed the Applicants' fundamental Right to the dignity of persons and institution, as guaranteed under section 33, 34, 35, 37 and 41 of the Constitution of the Federal Republic of Nigeria 2011 (as amended), and Article 4, 5, 6, and 12(1) of the African Charter on Human and People Right, Cap. 10 LFN, 2004, and was exceptionally wicked, barbaric, uncivilized and brute show of recklessness, abuse of power, and irresponsibility.*
- c) *A Declaration that the subsequent mandatory instructions to the Applicants and members of staff and also, the threat to further arrest members of Staff of the 1st Applicant by the 3rd Respondent IN RESPECT OF A LAND TRANSACTION NOW SUBJECT TO TRIAL AT AN Abuja High Court in Suit no CV/2444/20, at the prompting and inducement of the complainants i.e. Rilwan Lukeman and Abdulrahman Baran Yusuf, to be reporting and compelling the 1st Applicant's staff against their will to be reporting at the Area 10 office of the FCT command weekly without charging the Applicant to Court if any criminal offence has been established against them, was highly unjustifiable, and a flagrant violation of the Applicants' fundamental Right to the dignity of person, personal liberty, and to*

freedom of movement as guaranteed under section 34, 35, and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 4, 5, 6, and 12(1) of the African Charter on human and peoples Right, Cap. 10 LFN, 2004.

d) AN ORDER of the Court directing the Respondents jointly and severally to pay the Applicant the sum of N20,000,000.00 (Twenty Million Naira only) being special, aggravated and exemplary damages and or compensation for false imprisonment and as a result unjustified and flagrant abuse of the Applicants' right to the dignity of person and institution, to their personal liberty, to private and family life, and to freedom of movement, and to life as guaranteed him under sections 33, 34, 35, 37 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 4, 5, 6, and 12(1) of the African Charter of Human and Peoples Right.

e) AN ORDER of injunction perpetually restraining the Respondents, their servant's agents and privies from further inviting, arresting any staff of the 1st Applicant, causing the arrest, dehumanizing and detaining or in any manner interfering with the 2nd and 3rd Applicants' rights to freedom of movement, to personal liberty, to personal respect and dignity, in respect of the land in dispute as Zuba, which is subject to an ongoing trial in suit No CV/2444/20.

Apart from the accompanying Statement setting out the reliefs and grounds, the application is further supported by an affidavit of 16 paragraphs deposed to by one Ogbaji Jeffrey (a legal practitioner with Counsel to the Applicants). The Applicants' Counsel's written address dated 24th September, 2021 also accompanied the application.

The records before this Court indicate that the 1st, 2nd and 3rd Respondents were served with the originating processes and hearing notices. They however did not file anything in response to the application nor did they appear at the hearing of the application.

In his address, learned Counsel to the Applicants formulated two issues for the determination of the instant application to wit;

1. *Whether the intimidation and harassment of the 1st Applicant and the subsequent arrest and detention of the 2nd and 3rd Applicants was done under a lawful cause and thus justifiable in law.*
2. *Whether the Applicants are entitled to the reliefs sought, including special, aggravated and exemplary damages.*

After a careful perusal of the Statement, affidavit and address before this Court, I am of the firm view that the Applicants' issues can be adequately addressed under one main issue to wit;

Whether the Applicants have sufficiently established their claim to be entitled to the reliefs sought by them in the Statement accompanying the instant application.

The facts upon which the Applicants have relied for the instant application are set out in their affidavit in support.

Succinctly put, the Applicants' averment is that 2nd and 3rd Applicants, who were staff of the 1st Applicant (a mortgage institution), were invited and interrogated in the months of May and June 2020 in the presence of three gun-wielding and fierce looking Policemen. That the 2nd and 3rd Applicants were asked to make statements about how they got to know a land known as open space at Zuba Relief Market measuring 21.5 x 16.5sqm covered by letter of allocation with Ref No. FCT/GWAc/2217/VOL1. A copy of said letter is attached to the affidavit in support marked Exhibit A. They averred that the 2nd Applicant who was not allowed access to his routine drugs as a hypertensive patient had to be rushed to the hospital after several hours of detention. That the 3rd Respondent had mandated the Applicants to be reporting to the office without charging them to court. That the complainants are Rilwan Lukeman and Abdulrahman Baran Yusuf who claimed to be beneficiaries of the said plot of land and had initially commenced criminal proceedings

before withdrawing same and filing a civil action. Copies of the said court processes were annexed as Exhibits B and C.

The Applicants further averred that the investigating officers knew and were told that the matter they were called upon to investigate borders onland ownership dispute which is subject to civil trial, but the officers continued their threat to harass, arrest and intimidate the Applicants. That the Respondents recently charged the 1st Applicant's witness to court on allegation of conspiracy etc. Exhibit D was attached as a copy of the charge sheet. That on 15th September 2020 an Assistant Superintendent of Police (ASP) called the 2nd Applicant asking him to report to the FCT Police Command with the 3rd Applicant. That the Respondents' agents have continued to threaten to arrest and detain the Applicants.

Arguing for the grant of the instant application, learned Counsel to the Applicants submitted in his address that the arrest and detention of the Applicants over a purely civil matter bothering on ownership and title to land is unlawful as it was done without lawful cause. He relied on Section 214(2) of the Nigerian Constitution and Section 4 of the Police Act on the powers and duties of the Nigeria Police. He contended that the use of the police to arrest and detain a citizen for no lawful cause is illegal. He argued that the Respondents know fully well that there is no substance in the allegations made against the Applicants. Counsel posited that any proven arrest and detention must be justified in law but the Respondents have failed to justify same in this case. It is his contention that the issue of degrading treatment and deprivation of the Applicant's liberty will only be looked at from the legality and justification of the Applicants' arrest in the first place. He argued that the affidavit evidence has established that the Respondents were actuated by improper and indirect motives in the infringement of the Applicants' fundamental rights as there is no reasonable cause.

It is Counsel's further submission that the Applicants are entitled to the reliefs sought in their Statement made pursuant to the Rules. He contended that there is no element of crime and it is not part of the statutory duties of the Police to engage in arrest of a citizen without just cause. He argued

that the law is that torture or inhuman/degrading treatment includes mental torture, deprivation, agony and worry as suffered by the 2nd and 3rd Applicants. He submitted that the Judex is bound to grant reliefs sought where there is evidence of breach of fundamental rights. He cited the case of **DRILLING CO. LTD V. CAPTAIN SULGIN OLEKSNDR (2003) 16 WRN 74**. He posited that exemplary damages is recoverable against a defendant where it has been shown that his conduct has been high-handed, outrageous, insolent, malicious etc. It is Counsel's contention that the Applicants have proved sufficient facts that entitle them to the award of special, aggravated and exemplary damages.

Learned Counsel to the Applicants concluded his arguments by urging this Honourable Court to enter judgment in favour of the Applicants in terms of the reliefs sought in their Statement.

In the resolution of the issue before this Court, it is pertinent to note that the instant action is one brought by the Applicants for the enforcement of their fundamental rights. The law is that the burden of proof lies on the Applicants to establish by credible affidavit evidence that their fundamental rights were breached. – see the decision of the Court of Appeal in the case of **FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (2002) 10 NWLR PT. 774 P. 95** which decision was upheld by the Supreme Court in **FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (2009) 5 NWLR PT. 1135 P. 588**. See also the case of **MR. COSMOS ONAH V. MR. DESMOND OKENWA & ORS (2010) LPELR-4781(CA)**.

One of the reliefs which the Applicants seek in this application is a declaration that the arrest and whisking away of the 2nd and 3rd Applicants to the FCT Police command at Area 10, Garki Abuja by the Respondents' officers is a breach of their fundamental right to the dignity of persons and institution guaranteed under Sections 33, 34, 35, 37 and 41 of the Constitution of the Federal Republic of Nigeria. See the second relief of the Statement.

The 1st Respondent is the *Nigeria Police Force* while the 2nd and 3rd Respondents are its officers. This Honourable Court can and ought to take

judicial notice of the 1st – 3rd Respondents’ statutory duties to investigate, detect and prevent crime as well as to apprehend and prosecute suspected criminal offenders under provisions of the **Police Act**, the **Administration of Criminal Justice Act 2015 (ACJA)** and the **Constitution of the Federal Republic of Nigeria 1999 (as amended)** respectively. They are therefore equipped with the power to arrest and detain a person upon reasonable suspicion of his having committed a criminal offence. See particularly **Sections 214 and 215 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** as well as **Sections 4 and 24 of the Police Act**.

The position of the law is that *where there is evidence of arrest*(that is being challenged as unlawful) of an applicant in an application for enforcement of fundamental right, it is for the respondent to show that the arrest was lawful. – see the cases of **EJEFOR V. OKEKE (2000) 7 NWLR PT. 665 P. 363** and **FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (SUPRA)**.

In the instant case, the Applicants did not say anywhere in their affidavit that any of them was ‘*arrested*’ or ‘*whisked away*’ by the Respondents or their men. What the Applicants averred is that the 2nd and 3rd Respondents were *invited* and interrogated in the months of May and June 2020 and asked to make statements in respect of how they got to know about a particular land.

There is a world of difference between ‘invitation’ and ‘arrest’ by the police. While ‘arrest’ connotes compulsion by which a person arrested loses his personal liberty whether he likes it or not, an invitation connotes voluntariness. In other words, a person who honours a police invitation does so voluntarily without compulsion. It does not imply an arrest. This was emphasized in the decision of the Court of Appeal per Tur JCA in the case of **AYABAM V. C.O.P BENUE STATE (2019) LPELR-47283(CA) AT PP. 89 – 123 PARAS. D – D**.

There is simply no evidence before this Court of any arrest or even ‘whisking away’ of the Applicants by the Respondents. The Applicants

who say they were invited have failed to establish the fact that they were arrested or whisked away by the Respondents. The prayer sought by the Applicants to declare their arrest and whisking away as a breach of their fundamental rights, for whatever reason, cannot be granted in the circumstances.

The Applicants also seek declarations that the manner in which they were invited, harassed and intimidated by officers of the Respondents on 22nd May, 2017 and the subsequent instruction to them to report weekly at the Area 10 office of the FCT command over a land transaction was an abuse of the Applicants' fundamental rights to the dignity of person and institution, personal liberty, freedom of movement and privacy as guaranteed under Sections 34, 35, 37 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

In the instant case, the Applicants were not arrested by the Respondents. That much is clear as determined by this Court earlier. Rather, they averred that they were merely invited by the Respondents. The Applicants have not said they do not know why they were invited. They allege that they were questioned in respect of a particular land of which the complainants were persons claiming to be owners. Although the Applicants allege rather vaguely and generally that they were invited in respect of a land issue and civil matter, they however did not provide sufficient facts to support this. They clearly did not deny that they know anything about the land in question. They have however not stated exactly the nature of their involvement with the land in question. The mere fact that a criminal complaint involves a land and a civil action in respect thereof which is in court does not mean there is no element of crime at all involved in the matter. A cause of action may give rise to a civil action and may also constitute a crime as well. The Applicants who have the onus of establishing that their fundamental rights were breached have not placed sufficient, satisfactory and cogent facts before this Court to show that they were invited by the Respondents in respect of a purely civil matter not flavoured with any criminal connotation.

Now does the mere invitation by the Respondents amount to a breach of the law and fundamental rights?

I have stated earlier that this Court ought to take judicial notice of the Respondents' Constitutional and Statutory duties to detect, prevent and investigate criminal acts.

It is trite position of the law that the exercise of the powers of the police to invite and investigate crimes *simpliciter* cannot amount to a breach of fundamental rights. In other words, the mere invitation of a person by the Police does not constitute abuse of the process of law and/or breach of fundamental right. See the cases of

IHUA-MADUENYI V. ROBINSON & ORS (2019) LPELR-47252(CA) AT P. 21 PARAS. D-E,

UNIVERSAL INVESTMENT & DEVELOPMENT & ANOR V. ITOROH & ORS (2021) LPELR-53414(CA)

and

EFCC V. DIAMOND BANK PLC & ORS (2018) LPELR-44217(SC).

In SSS V. WECHIE (2021) LPELR-55956(CA) AT PP. 32 – 33 PARAS. F-B the Court of Appeal held as follows per Elechi JCA;

“I have dealt extensively on this issue in issue five herein before and still maintain my stand that mere invitation and interview does not amount to violation of Respondents right. In his affidavit, Respondent averred that he was invited via a phone call. He honoured the invitation (without arrest). He was questioned and educated on the security implications of his planned protest and was allowed to go on the same day.

Under this issue, I hold the strong opinion that the Appellant did not breach Respondents right simply by inviting and interviewing the Respondent as same does not violate Section 35 of the 1999 Constitution (as amended) in any way.”

It is necessary to reiterate for emphasis that the onus is on the Applicants to prove by credible affidavit evidence that their fundamental rights were breached. This the Applicants must do whether or not the Respondents filed a counter affidavit to the instant application for enforcement of fundamental rights. – see the Court of Appeal case of **FAITH OKAFOR V. LAGOS STATE GOVERNMENT & ANOR (2016) LPELR-41066(CA)** where it was held per Ogakwu JCA as follows;

“The law remains that he who asserts must prove. So the Appellant has the onus of proving by credible affidavit evidence that her fundamental rights were breached. See ONAH v. OKENWA (2010) 7 NWLR (PT 1194) 512 at 535-536. This is so notwithstanding the Appellant's contention that the core paragraphs of the Respondents' Counter Affidavit had been struck out. The primary reliefs sought by the Appellant are declaratory in nature and she had the burden of proving the same by credible affidavit evidence irrespective of whether the Respondents filed a counter affidavit or not. See NWOKIDU v. OKANU (supra) and FRANCIS v. CITEC INT'L ESTATE LTD (supra).”

The Court will not be satisfied based on a mere allegation or deposition in an affidavit that there is a likelihood of infringement. There must be enough acts on the part of the respondent to prove that the fundamental rights of the applicant were infringed or likely. – see the cases of

AL-HASHIM V. TOM & ORS (2019) LPELR-47651(CA) P. 16, PARAS. A-E

A. G. FEDERATION V. KASHAMU & ORS (2018) LPELR-46594(CA)

and

JATAU V. A.G., & C.J., KADUNA STATE & ANOR (2021) LPELR-55758(CA) AT PP. 20 – 22 PARAS. D-A

In **OKWECHE V. OCHICHE & ORS (2022) LPELR-56542(CA) AT P. 7 PARAS. C-E** it was held by the Court of Appeal as follows;

*“The settled position of the law in cases of allegation of violation of fundamental rights is that a mere allegation or deposition in an affidavit that an applicant was arrested and detained is not sufficient to constitute proof of infringement or infraction on the right of an applicant, the specific facts of the alleged arrest and detention as well as the duration must be proved in substantial details. See **UDO & ORS V ESSIEN & ORS** (2014) LPELR - 22684 and **OANDO PLC V FARMATIC BIOGA WEST AFRICA LTD & ANOR** (2018) LPELR - 45504 (CA).”*

Relevant facts are therefore very crucial to an applicant’s action for enforcement of fundamental rights.

In the case of **JATAU V. A.G., & C.J., KADUNA STATE & ANOR (SUPRA) AT P. 22 PARAS. A-F** the Court of Appeal held that

“The grant or refusal of the reliefs sought for alleged breach of fundamental human rights are purely discretionary. Like in all cases of exercise of discretion the Court must do so judicially and judiciously. The Court will not exercise its discretion according to its whims and caprices but based on facts and materials presented before the Court with a view to persuade the Court to exercise its discretion in favour of granting the relief. In the exercise of discretion no two cases are the same, therefore it is absolutely within the discretionary powers of the Court to be satisfied that the facts and materials presented before it are cogent and credible to justify the grant of the reliefs sought. Where the trial Court rightly in its view holds that the facts and materials presented before it are not cogent, credible and satisfactory to justify the grant of the reliefs sought, the appellate Court will not substitute its own views with that of the trial Court.”

The Applicants in this case failed to establish by cogent, credible and satisfactory facts and evidence that they were invited for investigation and interrogation over a purely civil matter by the Respondents. They have failed to establish that their invitation by the Respondents was in breach of

the Respondents' duty to investigate and was in breach of the process of the law or a breach of fundamental rights.

It is trite that where an applicant alleging infringement of his fundamental rights failed to place vital evidence regarding the infringement or breach of such rights or where scanty evidence was put in by the applicant, the trial Court is at liberty to strike out such application for being devoid of merits. See **OKWECHE V. OCHICHE & ORS (SUPRA) AT P. 11 PARAS. A-B.**

In the circumstances, the second and third reliefs sought in the Statement filed along with the instant application must fail.

Before I conclude this Judgment, let me quickly address a salient point that pertains to the competence of the instant application having been hitherto an academic exercise, with particular reference to the supporting affidavit.

As stated earlier, the affidavit upon which the instant application is based was deposed to not by the Applicants themselves but by Ogbaji Jeffrey, a legal practitioner with Counsel to the Applicants. Paragraphs 1 – 3 of Ogbaji Jeffrey's affidavit reads thus;

- 1. That I am Legal practitioner in the Law Firm of Springfield Solicitors, Counsel to the Applicants.*
- 2. That I am Counsel representing the Applicants in this case and as such, I am conversant with the facts of this case and facts deposed hereunder.*
- 3. That the 2nd and 3rd Applicants are indisposed to make an affidavit herein, hence this application by me.*

See also particularly paragraph 5, 6, 11 & 14.

The deponent then proceeds in the remaining succeeding paragraphs of the affidavit to depose to other facts forming the basis for this application.

The fact deposed to in Paragraphs 5, 6, 11 and 14 do not appear to be facts within the personal knowledge of the and he has failed to particularise

his exact source of information as provided in Section 115 of the Evidence Act 2011.

On what an affidavit must contain, Section 115(1) – (4) of the Evidence Act 2011 provides as follows;

115.

- (1) Every affidavit used in the court shall contain only a statement of fact and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.*
- (2) An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion.*
- (3) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.*
- (4) When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.*

Thus, under **Section 115(1), (3) and (4) of the Evidence Act 2011**, statement of facts derived from any source other than from the deponent's personal knowledge may be made in an affidavit ***provided*** reasonable particulars are given in respect of such source of information.

The position of the Court of Appeal in the case of **U.B.A. LTD. V. S.G.B. LTD. (1996) 10 NWLR PT. 478 P. 381 AT P. 387 PARAS. C-D & P. 388 PARA. A** is that when a deponent to an affidavit deposes to an information derived from a source, the source of such information must be disclosed, otherwise the deposition will be regarded as hearsay evidence and inadmissible as being contrary to the provisions of the Evidence Act.

See also

ABIODUN V. C. J. KWARA STATE (2007) 18 NWLR PT. 1065 P. 109.

PDP V. AMIN & ANOR (2019) LPELR-48096(CA) AT PP. 47 – 48 PARAS. C-C.

and

THOR LTD V. FCMB LTD (2005) LPELR-3242(SC) AT PP. 16 – 17 PARAS. F-A.

An affidavit that offends these provisions is liable to be struck out, or the Court may not attach any weight to it even if it is not struck out. - See **OBI V. OJUKWU & ANOR (2009) LPELR-8511(CA) AT PP. 37 - 40 PARAS. E-D.**

In the instant case, there is nothing that indicates that the Applicants' Counsel who deposed to the affidavit in support did so from his personal knowledge of the facts of which he deposed to.

It was held by the Court of Appeal in **BECAY INTL (NIG) LTD V. FIDELITY BANK (2017) LPELR-41971(CA) AT PP. 10 – 11 PARAS. D-C** that it is now well accepted practice that Counsel must refrain from deposing to affidavits on contentious matters of facts on behalf of their clients so as to assist Counsel to avoid the pitfall of breaching the provisions of **Section 115(1), (2) and (4) of the Evidence Act 2011.**

In the instant case, the facts surrounding the events which constitute the Applicants' complaint as averred in paragraphs 4 – 14 do not appear to be within the personal knowledge of the deponent to the affidavit. Yet, the deponent did not disclose in his affidavit the source of his information or the grounds for his belief in them. The instant affidavit is therefore in breach of the mandatory provisions of **Section 115(1), (3) and (4) of the Evidence Act 2011** and it is liable to be struck out as incompetent on this ground. See

AHMED V. CBN (2013) 2 NWLRPT. 1365 P. 352 AT PP. 368 – 370 PARAS. H-D.

Now even if this Court was to, by any stretch of the imagination, rely on depositions in the affidavit, the facts presented therein remains insufficient to establish a breach of the fundamental human rights of the Applicants as claimed. This much is reflected in the finding already hitherto made by this Court upon the said presented facts.

Consequent to the failure of the first three reliefs of the Statement (which are the principal reliefs), the remaining ancillary reliefs must also fail.

In sum, the issue for determination is resolved against the Applicants and their application for the enforcement of their fundamental rights fails.

The instant application is without merit and it is hereby accordingly dismissed in its entirety.

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Honourable Justice M. E. Anenih

APPEARANCES:

EzenwaOkolie Esq appears with Deborah Nweke (Ms) and Jeffrey Ogbaji Esq for the Applicants.

Respondents unrepresented.