

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

MOTION NO: FCT/HC/M/10649/2020

BETWEEN:

ADAM AKINFOLABI AKINDELE.....APPLICANT

VS

- 1. INSPECTOR GENERAL OF POLICE**
- 2. DEPUTY INSPECTOR GENERAL OF POLICE FORCE CIID,
AREA 10, GARKI, ABUJA.....RESPONDENTS**

RULING/JUDGMENT

By an Originating Motion dated 11/10/2020 and filed on 17/10/2020, brought pursuant to Sections 34, 35, 37, 40, 41 and 46 of the Constitution of Federal Republic of Nigeria 1999 (As Amended); Articles 5, 6, 10 and 12 (1) of the African Chapter of Human and Peoples Right (Ratification and Enforcement) Act, Cap A9, LFN 2004, Order 11 Rules 1 – 5 of FREPRules 2009 and under the inherent jurisdiction of the Hon. Court. The Applicant seek the following reliefs.

- (1) An order against the Respondent jointly and severally for enforcement of Fundamental Right of the Applicant in terms of Reliefs sought in the Statement in support of the application;

- (A) **DECLARATION** that the threat of arrest, intimidation, harassment and unabated humiliation of the Applicant without legal basis over the management of Estate of Madam Iyalode Efuroye Tinubu pursuant to appointment of Adamakin Investment and Works Limited as the Attorney, a Company which is being control and managed by the Applicant constitute a violation of Applicant's Fundamental Right to Dignity of Human Person guarantee under Section 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Article 3 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004 "(The Charter")
- (B) **DECLARATION** that the Respondents cannot dabble into or enquire into a management of Estate of deceased person nor prod the activities of its Attorney duly and properly appointed to superintend over the affairs of the Estate which is entirely a Civil Matter and does not cannot or imply any criminal cause of action.
- (C) **DECLARATION** that the arrest and threat of further arrest of the Applicant on a matter that has already been investigated and concluded by the Respondent for the purpose of restricting his movement, personal liberty and freedom constitute a violation of Applicant Right under

Sections 34, 35 and 41 of the Constitution of Federal Republic of Nigeria 1999 (As Amended), Articles 3, 4, 5, 6, 7 and 12 of the African Charter on Human and peoples' Right (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004 ("The Charter")

- (D) **DECLARATION** that the continue hacking into telephone conversions of the Applicants, prodding and recording of private discussion with his family, agents, employee, business associates by (the officers acting under the Command of) the 1st and 2nd Respondents (or by anyone howsoever, or any authority, government or its instrumentality or agency) without the consent and authority of the Applicant is unlawful, unconstitutional and constitute an infringement of the Applicant's Fundamental Right to private life guaranteed under Section 37 of the Constitution.
- (E) **A DECLARATION** that the harassment, metal torture, degrading and inhuman treatment meted out against the Applicant by officers acting under the Command of 1st and 2nd Respondents is ultra vires the Respondents (or indeed any person or authority) illegal, unconstitutional and constitute a violation of Applicant Fundamental Right to Dignity of person as enshrine in Section 34 of the Constitution and Article 5 of the African Charter.

- (F) **A DECLARATION** that the Applicant is entitled to adequate compensation and public apology from the Respondents as provided for in Sections 35 (6) and 46 (1) of the 1999 Constitution, over the blatant violation of the Applicant's Fundamental Rights.
- (G) **AN ORDER** of Perpetual Injunction restraining the Respondents whether by themselves or their officers, agents, representative and privies, from further harassing, intimidating and/or arresting the Applicant or interfering in respect of the facts and or transactions in this case or any fact relating to the management of Estate of Madam Iyalode Efunroye Tinubu for which the Respondents have been harassing, arresting and detaining the Applicant.
- (H) **AN ORDER** of this Hon. Court directing or compelling the Respondents jointly and severally to publish in at least three (3) National Dailies an unreserved written apology to the Applicant for the brazen breach of the Applicant's Fundamental Right.
- (I) **AN ORDER** directing the Respondents to jointly and severally pay the sum of ₦20 Million Naira only as damages for violation of Fundamental Right of the Applicant by the Respondents.

(J) Such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application is a 48 Paragraphs affidavit sworn to by Prince Tunji Adeniji with Exhibits marked as "AD¹ – AD¹²" attached. Also filed is a Statement which set out the name and description of the Applicant, the reliefs sought and grounds upon which the reliefs are sought. In compliance with the Rules a Written Address was filed and adopted. Applicant filed two (2) further affidavits, one dated 21/10/2021 sworn to by Abigail Wiki Thomas, with 5 Exhibits attached, the second dated 1/11/2021, sworn to by Mohammed O Idris reliance was placed on all the averments. By way of adumbration, Applicant Counsel submits that there was no challenge to their Paragraphs 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23-35 and 37, 38, 44, 45, and 46 of their supporting affidavit, urge the court to accept the facts contained therein as true and correct, and referred the court to several judicial authorities, in urging the court to grant the application.

Respondent Counsel submits that in response to the Originating Motion, the Respondent filed a 46 paragraph Counter-Affidavits sworn to by Aminu Abubakar on 11/2/2021. Also filed is a Written address, adopts and relies on all the averments contained therein, in urging the court to refuse the application.

On receipt of the processes served on the Respondents, the Respondent filed a Notice of Preliminary Objection. The said Notice of Preliminary

Objection was filed on 11/2/2021 by the Respondents seeking for the following reliefs;

- (1) An Order of this Hon. Court striking out the Applicant's Suit for want of jurisdiction.
- (2) Omnibus Relief

The grounds upon which the application is sought are as follows: -

- (1) The action which the Applicant referred to as alleged likely breach of his Fundamental Rights took place in Lagos State and not within the jurisdiction of the court.
- (2) The Applicant's suit is seeking for a declaration against the actions of Federal Government Agencies and is not within the jurisdiction of this court.
- (3) The main claim of the Applicant is not covered by Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)

In support of the Notice of Preliminary Objection is a 21 paragraph affidavit sworn to by one Aminu Abubakar. Also filed is a Written Address, adopts same in urging the court to strike out this application for want of jurisdiction.

In response to the Notice of Preliminary Objection, the Applicant/ Respondent filed a Written Address and adopt the said Address and urged the court to dismiss the application.

In the Written Address of Respondent/Applicant, settled by Mustapha Sulieman formulated one (1) sole issue for determination.

“Whether this Honourable Court have the requisite jurisdiction to entertain the Applicants/Respondents Fundamental Right Enforcement application”.

And submits that jurisdiction is the live wire of adjudication, which the court must determine one way or the other. And in doing so the court must look at the parties and the subject matter of the case before it. Referred the court to several authorities.

Contending that in this instant case, a careful perusal reveals that the 1st /2nd Respondents are agents of the Federal Government, and being agents can only be sued before the Federal High Court, the subject matter and reliefs are exclusively for the Federal High Court to determine. Refer to Section 251 (c) of Constitution of Federal Republic of Nigeria 1999; and urge the court to decline jurisdiction.

Further contend that the claim of the Applicant under the FREP Rules are outside the preview of the Chapter IV of the Constitution of Federal Republic of Nigeria 1999, which claim should be the main claim and not ancillary to enable court have jurisdiction. Referred to case of Amale Vs Sokoto Local Govt (2012) 5 NWLR (PT 1292) Pg 181 @ 199 Para B – G (SC). Submits that in this instant, the main claim of the Applicant’s application, revolves round the Management and administration of the Estate of Madam Iyalode Efuroye Tinubu, in effect not covered by Chapter IV of the Constitution of Federal Republic of Nigeria 1999, therefore, this

court lacks the jurisdiction to entertain the suit. Referred to case Tukur Vs Govt of Taraba State (1997) 6 NWLR (PT. 510) P. 549 @ PP. 582 – 583 Para F – C.

Also, contend that by the trite position of the law, application under the FREP Rules – Order II Rule I, pursuant to Section 46 of the Constitution of Federal Republic of Nigeria 1999, must be brought at the place of the occurrence of the alleged infringement of the right. That in this instant, the alleged infringement occurred in Lagos, where all Charges against the Applicant was filed, rather it is the Federal High Court that has jurisdiction and not the FCT High Court and urge the court to so hold.

In the Written Address of the Applicant/Respondent, settled by Mohammed O. Idris Esq, only one (1) issue was formulated for determination, which is;

“Whether this Honourable Court has jurisdiction to adjudicate on this matter”

And submits that in line with the trite law, that it is the claim of a party that the court should look at to determine its jurisdiction, a clear perusal of the Originating process of this instant application, reveals that the application and grounds relied upon fall squarely within the purview of the Chapter IV of the Constitution of Federal Republic of Nigeria 1999, that any action by a law enforcement agency without legal justification against an individual will be in breach of Fundamental Rights. Refers to case of Okafor & Ors Vs AIG Police Zone 11 Onikan & Ors (2019) LPELR – 55020 (CA) @ 21 – 23.

On issue of whether it is the federal High Court that has exclusively right pursuant to section 251 (r) of the Constitution of Federal Republic of Nigeria 1999 as contended, submits that this position of the law has been settled in the case of Nderayoon Vs C.O.P; FCT & Ors (2021) LPELR (54891) CA @ Pg 13 – 17 Para C.C and urged the court to hold that it has jurisdiction, notwithstanding that the parties are agents of the Federal Government.

On the issue of where the alleged act was committed. Submits relying on Para 44 and Exhibits 10 of their affidavit contend that the breach complained of occurred within the territorial jurisdiction of this court. In all urge the court to hold that it has jurisdiction to entertain this matter.

Having carefully considered the submission of both counsel, the judicial authorities cited, I find that the issue which calls for determination is;

“Whether the Respondent/Applicant has made out a case to warrant the grant of the reliefs sought”.

This application borders on the question of the jurisdiction of this court to entertain this suit.

Jurisdiction overtime has been held to be the live wire of any adjudication and where the court lacks it, any proceedings conducted thereon is a nullity. See Gafar Vs Govt of Kwara State (2007) 4 NWLR (PT. 1024) P. 411 Para A – D. To determine whether it has jurisdiction the court must look at the processes before it, in this case, the reliefs and grounds of this

instant Notice of Preliminary Objection. I shall consider this application along the lines of the grounds relied on by the Applicant to determine it.

Firstly, that the alleged breach of the Applicant Fundamental Right took place in Lagos State and not within the jurisdiction of this court. It is contended that the events, the Petition and Investigation all occurred in Lagos, hence not within this court jurisdiction. Relied on order 11 Rule 1 of the FREP (Rules) 2009.

The Respondent on the other hand, contend that the parties resides and have offices in Abuja. And flowing from the activities of the Respondent/Applicant in the process of arrest from their Abuja Office this court has jurisdiction to determine the matter.

Granted that order 11 Rule 1 of FREP (Rules), 2009, is clear, it must be noted from reliefs sought and grounds stated by the Respondent/Applicant in this instant suit for enforcement of his right, it is clear that this Suit is one that can be instituted in this court, I so hold.

Secondly, on the ground II, that the acts Applicant complained of is against the act of Federal Government Agency and therefore not within this court jurisdiction.

The Applicant herein contend and relying on Section 251 (r) of the Constitution of Federal Republic of Nigeria 1999 (As Amended), the actions of the Respondent/Applicant giving rise to the complaint of the Applicant in this instant application is against a federal Government Agency, which the

1st /2nd Respondent represent; therefore, the suit can only be entertain in the Federal High Court.

On the other hand, the Applicant/Respondent contend that granted that the Federal High Court has exclusive jurisdiction pursuant to Section 251 (i) (p) (q) and (r) of the Constitution of Federal Republic of Nigeria 1999, but on Civil and Administrative, Management matters, that this present action does not relate to Administration or Management. Referred to judicial authorities settling the issue on this point. See *Nderayoon Vs C.O.P, FCT & Ors* (2021) LPELR – 54891 (CA) Pg 13 – 17 Para C.C. and urge the court to hold that it has jurisdiction to determine this Suit.

I have carefully considered the submission of both counsel in line with the law and find that granted that the federal High Court has exclusive jurisdiction within the provisions of Section 251 of the Constitution of Federal Republic of Nigeria 1999, it is the firm view of this court, that relying on the authority of *Nderayon Vs C.O.P (FCT & Ors) Supra*, were My Lord Moore A. A. Adumen (JCA) stated;

“.....I need not say, but it is correct that the High Court of FCT, Abuja enjoys a special status as the High Court of a State, with its Territorial jurisdiction limited to the FCT as defined by Section 3 (4) & (6) and 297 of the Constitution of Federal Republic of Nigeria 1999 (As Amended) and Part II of the First Schedule thereto. The consensus of judicial decisions appears to be that the Federal High Court, the High Court of a State and the High Court of the FCT, Abuja, have or enjoy concurrent jurisdiction in Fundamental Right

causes or matters, whether or not the alleged violation is by an agent or Agency of the Federal Government of Nigeria.....”

From all of these, it is the finding of the court that, it has jurisdiction to hear and determine this suit.

On the third grounds, the Applicant/Respondent contend that the Applicant/Respondent main claim in this instant suit is not covered by Chapter IV of the Constitution of Federal Republic of Nigeria 1999 (As Amended).

The Applicant contend that it is trite that in an application of this nature, under Chapter IV of the Constitution of Federal Republic of Nigeria 1999, should be the main or principal claim and not the ancillary claim for a court to have jurisdiction. Referred to case of Amale Vs Sokoto State Local Govt. (2012) 5 NWLR (PT. 1292) P. 181 @ 199 Para B – C. That in this instant, the main claim of the Applicant borders on Management and Administration of the Estate of Madam Iyalode Efuroye Tinubu and on the Applicant’s company purported appointment as the Attorney to the said Estate. Urged the court to look at the Reliefs A, B, and G, will find that the principal claim in the Applicant suit are not covered under Chapter IV of the Constitution of Federal Republic of Nigeria 1999 and further pursuant to the conclusion of their investigation, the Applicant was subsequently charge to court in Charge No. LD/10553C/2019 in FRN Vs Akindele Afolabi & Ors. Referred this court to the cases of Tukur Vs Govt of Taraba State (1997) 6 NWLR (PT. 510) P. 549 @ PP. 582 – 583 Para F – C and Augustine O. Emodi Esq

Vs Registered Trustees of Asaba Sports Club & Ors in Suit No. CA/AS/371/2014 in urging the court to decline jurisdiction.

The Applicant/Respondent contend and relying on judicial authorities cited and the reliefs contains in the main claim, that it falls squarely within the purview of the Fundamental Rights as guaranteed in the Constitution. Further contend that the issue of the Power of Attorney is purely a Civil matter and outside the duty of the Police. And urge the court to hold that it has jurisdiction.

It is trite that an Applicant seeking the enforcement of his Right under Chapter IV of the Constitution of Federal Republic of Nigeria 1999 (As Amended) has to show that the reliefs sought is within the purview of the reliefs as stated in Chapter IV of the Constitution of Federal Republic of Nigeria 1999, giving effect to by express Provisions of Section 46 of the Constitution of Federal Republic of Nigeria 1999, and Order 11 Rule 1 of Fundamental Right Enforcement Procedure Rules, 2009. In the case of Uzoukwu Vs Ezeonu 11 (1991) 6 NWLR (PT. 200) 708 @ 781, the court in construing the Section 42 of the 1979 Constitution, which is in Pari materia to Section 46 of the Constitution of Federal Republic of Nigeria 1999, as follows;

“That a person who wishes to Petition that he is entitled to a Fundamental Right”

- (a) Must allege that any provisions of the Fundamental Right under Chapter IV has been contravened, or

(b) The contravention is in relation to him.

In this instant, on a careful perused of the processes on both sides, the court finds that the action culminating to the main suit borders on activities of the Applicant in the Management and Administration of the Estate of Madam Iyalode Efuroye Tinubu, and the alleged purported Power of Attorney, for which the Respondent/Applicant invested and caused the Applicant/Respondent to be charged before a competent court of law. This fact were not challenged by the Applicant/Respondent. In any event, they did not file a Counter-affidavit rather relied on Written Address. This court have carefully read the judicial authority cited by the Respondent/Applicant, that is the case of Augustine O. Emodi Esq Vs Registered Trustee of Asaba Sports Club & Ors (Supra) wherein the court held that where the Appellant has been charged to court , the Appellant cannot seek to enforce his rights until the criminal trial is completed .

Having carefully considered all of these, in line with the judicial authorities and the facts that the Applicant have been charged to court, it is the holden of this court that the Applicant cannot at this stage seek redress for breach of his Fundamental Right.

Granted that this court, has held that it has jurisdiction in respect of grounds 1, 11 of the grounds relied on for the reliefs sought, the court having found that the main claim of the Applicant in this instant suit is not covered by Chapter IV of the Constitution of Federal Republic of Nigeria 1999 (As Amended), I hold that this court has no jurisdiction to entertain this action.

In consequence and from all of these, the court finds that the Notice of Preliminary Objection has merit, the Applicant/Respondent having failed to bring sufficient facts to support the case brought under Chapter IV of the Constitution of Federal Republic of Nigeria 1999 (As Amended) and moreso the Applicant has been charged to a competent court. Accordingly, the Notice of Preliminary Objection succeeds, and the suit is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

29/4/2022

APPEARANCE

M.D. IDRIS ESQ FOR THE APPLICANT/RESPONDENT

MUSTAPHA SULEIMAN ESQ FOR THE RESPONDENT/APPLICANT