

**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/CV/1917/2019

BETWEEN:

MR. BONIFACE SHANGBUM.....APPLICANT

VS

- 1. INSPECTOR GENERAL OF POLICE**
- 2. COMMISSIONER OF POLICE FCT**
- 3. MR. ISMAILA AKWU**
- 4. COLLANDRA NIGERIA LTD.....RESPONDENTS**

RULING/JUDGMENT

By a Motion on Notice dated 16/5/2019 and filed same day, brought pursuant to Order 11 Rules 1 – 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and Sections 35 (5), 36, 41, 44 and 46 of 1999 Constitution (As Amended); Articles 2, 5, 6 & 12 XVIII of the African Charters on Human and Peoples' Right, Article 17 (2) of UDHR and under the inherent jurisdiction of this Honourable Court. The Applicant seeks the following Reliefs:-

1. A DECLARATION that the arrest, detention, torture and

continue arrest of the Applicant by the men of the 1st and 2nd Respondents led by the 3rd Respondent since 28th April 2019 for suspicion and allegation of the theft of the 4th Respondent Gas product at his business premises opposite, living Faith Church Lokogoma, Abuja FCT and his continued detention from 28th April 2019 to date without an Order of Court and his torture constitute an infringement of the Applicant's Fundamental Rights protected by 34 and 35 of the 1999 Constitution (As Amended) and Article 6 of the African Chapter on Human and Peoples' Rights.

2. A DECLARATION that the arrest, detention and torture of the Applicant Mr. Boniface Shangbum by the 1st, 2nd and 3rd Respondents at the Special Anti-Robbery Squad Office, Abattoir, Abuja since 28th April 2019 is unconstitutional, wrongful and illegal, null and void as same constitute a gross and deliberate violation of the Applicant's Fundamental Rights guaranteed by Section 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria.

3. AN ORDER compelling the 1st and 2nd Respondents, their Officer, Agents, Privies or otherwise howsoever to forthwith release the Applicant from detention pending the hearing and the determination of this application.

ALTERNATIVELY

4. AN INTERIM ORDER compelling the 1st, 2nd and 3rd

Respondents whether by themselves or their Agents, Servants, Privies or otherwise howsoever to produce the Applicant Mr. Boniface Shangbum before this Honourable Court on a date to be named by this Court and to show cause why he should not be released from unlawful detention.

5. AN INTERIM ORDER compelling the 1st and 2nd Respondents

to maintain and observed the status quo in this case pending the determination of this application.

6. AN ORDER against the Respondents jointly and severally for

payment of the sum of ₦50,000,000.00 (Fifty Million Naira Only) damages to the Applicant for his illegal and unlawful arrest, detention and torture since 28th April, 2019 to date.

7. AN ORDER mandating the Respondents jointly and/or

severally to deliver written apology to the Applicant in published (2) Two National Dailies in Nigeria for reckless violation of the Applicant Fundamental Rights.

8. AND for such further or other orders as this Honourable Court may deem fit to make in the circumstance.

In support of this application is a Statement which set out the name and description of Applicant, the reliefs sought and the grounds upon which the reliefs are sought. Also filed is a 38 Paragraphs affidavit in support of the application, sworn to by one Uchia Emmanuel, with one (1) Exhibit marked

as "A" attached. In compliance with the Rules, filed a Written Address dated 16/5/2019, adopts same in urging the court to grant the reliefs sought.

In response to the 4th Respondent's Counter-Affidavit, filed a Further/Better Affidavit dated 3/6/2019, with a Written Address and adopts and urge the court to grant as prayed.

The processes were served on all the Respondents; only the 4th Respondent reacted by filing a Notice of Preliminary Objection dated 16/7/2021. The 1st – 3rd Respondents did not file their respective responses to the application and were absent in court and equally not represented by Counsel, despite service of Hearing Notices on them.

In the said Notice of Preliminary Objection filed on 16/7/2021 by the 4th Respondent, prays the court for the following reliefs;

- (1) An Order of this Hon. Court striking out the Applicant's application for being incompetent.
- (2) Omnibus Relief.

In support of the Notice of Preliminary Objection, is a 3 Paragraph affidavit sworn to by one Vincent Sani, also filed is a Written Address in compliance with the Rules of Court and adopts same in urging the court to strike out the suit for being incompetent.

Responding, to the 4th Respondents, Notice of Preliminary Objection, the Applicant Counsel filed a Reply on point of law dated 29/9/2021 and adopts same, in urging the court to discountenance the said application.

In the Written Address of the 4th Respondent/Applicant, settled by Moses A. Ebute (SAN), only one (1) issue was formulated for determination,

“Whether the mode of commencing this application vide “Motion on Notice” is competent under the Rules of Court”.

And submits that granted that the FREP Rules does clearly spell out specific mode of taking out an action in Fundamental Rights cases, recourse can be made to the FCT High Rules, vide Order XV Rules of the FREP Rules and by Order 2 Rule 1 of Rules of FCT, no specific mention of Motion on Notice as a mode was stated. That the failure to comply with the appropriate procedure cannot be cured and termed a nullity under the exception to Order IX of FREP Rules. Referred the court to the Ruling of Hon. Justice Ekwo .J. in Suit No. No. FHC/ABJ/CS/813/2016 Frank Omoruyi Vs A.G. Federation and urged the court to strike out this application.

In the Written Address of the Applicant/Respondent settled by Douglas Najime Esq, only One (1) issue was formulated for determination, which is;

“Whether or not the application is incompetent on the basis that it was commenced by Motion on Notice”

And submits that it is trite law that Motion on Notice is a recognized mode of commencing Fundamental Human Rights Enforcement Proceedings and relies on the cases of Chief of Naval Staff, Abuja & Ors Vs Archibong & Ors (2020) LPELR – 5184 (CA) Abiola & Ors Vs Kahaga & Ors (2020) LPELR – 49963 (CA).

Further submits that the parties have taking steps in the matter, the 4th Respondent cannot turn round to complain. Refer to case Noibi Vs Fikolati (1987) 1 NWLR (PT. 52) 619. And further the 4th Respondent has not shown how this irregularity can cause him any injustice. Refer to Famfa Oil Ltd Vs A.G. Federation (2003) 18 NWLR (PT. 852) 453 @ 4668 Para A – B. In all urge the court to discountenance the 4th Respondent Notice of Preliminary Objection.

Having carefully considered the submission of Counsel and the judicial authorities cited, I find that the issue that calls for determination is;

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

In this instant application, the 4th Respondent/Applicant is seeking this court to strike out this suit on grounds that it was brought by way of Motion on Notice. I have carefully considered this application in line with the law and judicial authorities cited, the 4th Respondent Counsel have admitted that the FREP Rules does not provide for any specific mode.

It is the firm view of this court, considering the judicial authorities cited by the Applicant/Respondent which confirms that an application for Enforcement of Fundamental Right can be brought by an Originating Process, to agree with the submission of Applicant/Respondent Counsel, would amount to stretching it to mean that Motion on Notice is not a permitted mode of commencing or initiating an action under the FREP Rules. In any event, the Respondent/Applicant has taken steps in the

matter, therefore, cannot be heard to claim against this previewed irregularity.

From all of these, it is the firm view of the court that the Notice of Preliminary Objection of the 4th Respondent/Applicant lacks merit and it is hereby dismissed.

Having determined the Notice of Preliminary of the 4th Respondent/Applicant, the coast is now clear to consider the Applicant's Motion for Enforcement of his Fundamental Right.

I have mentioned earlier that the 1st – 3rd Respondents did not file their respective Counter-Affidavit to the Applicant's Motion for Enforcement of his Fundamental Rights. It therefore means that this court will in the circumstance accept the affidavit evidence of the Applicant as true and correct as against the 1st – 3rd Respondent and act on it. However, since the Applicant's seek amongst other reliefs, the court's declaratory order, the onus rest on the Applicant to rely on the strength of his case as same must be proven for him to be entitled to those statutory reliefs. See case of Omisore Vs Aregbesola (2015) ALL FWLR (PT. 698) 911 @ 933 Para E – H. Where the court stated;

“On the principle that a Claimant must succeed on the strength of his own case and not on weakness of the defence, failure on the part of a Defendant to give evidence does not automatically mean that judgment must be given in favour of a Plaintiff who has a duty to prove his case, where a Plaintiff fails to prove his case on a balance

of probability or preponderance of evidence, his case will be thrown out”.

It is in the light of these, that I shall proceed to consider and evaluate the evidence of the Applicant whether it is sufficient to grant the reliefs sought.

In the Written Address of the Applicant settled by Douglas Najime Esq, two (2) issues were formulated for determination, namely;

- (a) Whether the Respondents continuous arrest and failure to disclose the reason for the Applicant arrest does not amount to violation of his fundamental Right to liberty and be informed of the reason of his arrest at the time of the arrest as enunciated under Section 35 (1) and 36 (6) of Constitution of the Federal Republic of Nigeria 1999 (As Amended).
- (b) Whether putting into consideration the circumstance of this case the Applicant’s Fundamental Right has been breached to entitled him to the reliefs sought/claimed in addition to the written apology and compensation.

In the Written Address of the 4th Respondent settled by Moses A. Ebute (SAN), two issues were formulated for determination;

- (1) Whether the application of the Applicant discloses any reasonable cause of action against the 4th Respondent.
- (2) Whether this Hon. Court ought to grant the reliefs of the Applicant against the 4th Respondent

Having carefully considered the processes filed and the submission of both counsel, it is the finding of this court that only one (1) sole issue calls for determination, which is;

“Whether consequent upon those facts contained in the Applicant’s application and the materials before the court, the Applicant has established violation of his Fundamental Right so as to entitle him to the reliefs sought.

The sole issue encapsulates all the issues formulated by both Counsel in their Written Address.

In the first place, the Respondents were duly served with the processes, but only the 4th Respondent reacted to the processes. The 1st – 3rd Respondent, however, failed to react to the processes served on them and were not represented by Counsel of their choice at the hearing, despite service of hearing notices on them. The implication of this is that the facts contained in the affidavit of the Applicant is not controverted nor challenged by the 1st – 3rd Respondent. Therefore, in considering this application, the court will confine itself to the affidavit evidence of the Applicant and the 4th Respondent.

In this application, the Applicant is seeking the enforcement of his Constitutional Rights as enshrined in Section; 34, 35 (5), 36, 41, 44, and 46 of the Section 35 (1) and 36 (6) of Constitution of the Federal Republic of Nigeria 1999 (As Amended)

SECTION 34 reads;

“Every individual is entitled to respect the dignity of his person and accordingly no person shall be subjected to torture or inhuman and degrading treatment”.

SECTION 35 reads;

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law”.

Section 44 of the Constitution prohibits the compulsory acquisition of property while Section 46 (1) (2) provides for citizen to whose right is violated or likely to be violated to enforce their right in court.

In light of these Constitutional Provisions, it is essential to examine the complaint of to find whether there is a violation of these provisions claimed by the Applicant. Fundamental Right has been defined as a guaranteed in the Nigeria Constitution and it is a right to which every person is entitled when he is not subject to the disabilities enumerated in the Constitution of enjoy by virtue of being a human being. See the case of *Odogwu Vs A.G. Federation* (1996) NWLR (PT. 546) 508. In *Nemu Vs Lagos State* (1996) 6 NWLR (PT. 453) 42, the Court of Appeal held “if these rights guaranteed under Chapter IV of the Constitution are to be meaningful, they must be thoroughly examined in an action complaining of their breach, they are to be addressed in all the circumstances as appropriate”. In my view, what this means is that the court consider the facts made available to it from the affidavit evidence to determine whether or not there has been a violation or infringement of these rights.

The Applicant has by his affidavit evidence stated facts indicating that his Fundamental Human Rights as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (As Amended) particularly, Section 34 and 36, have been infringed upon by the 1st – 3rd Respondents. He stated that he was arrested on 28/4/2019 by men of the 1st and 2nd Respondent and subsequently transferred to the 3rd Respondent, sequel to his formal complaint to the Apo Police Station, consequent upon a robbery incident at the business premises of the 4th Respondent, where he resides and also the Marketing Manager to the 4th Respondent. That from that date, he has been in custody of the 1st – 3rd Respondent and despite all efforts and Petition, which is Exhibit "A", to the 2nd Respondent by his lawyers, the 1st – 3rd Respondents refused to grant him bail. All these facts are contained in Paragraphs 8 – 28 of the supporting affidavit. In all of these, the 1st – 3rd Respondent, did not react to it, I have earlier, in cause of this Ruling, mentioned the obvious implication.

The dignity and liberty of every citizen of Nigeria is guaranteed under Section 34 and 35 of Constitution of the Federal Republic of Nigeria 1999 (As Amended). However, Section 35 Constitution of the Federal Republic of Nigeria 1999 (As Amended) also provides the grounds upon which the liberty of citizen can be curtailed, what this means is that the said Section 35 is not an absolute right. By Section 35 (4) any person who is arrested or detained in accordance with sub-section (1) (c) shall be brought before a court of law within reasonable time and if he is not tried, within a period of two months from the date of his arrest or detention be released

unconditionally or upon conditions as are reasonably necessary to ensure that he appears at a later date.

It is not in controversy that the 1st – 3rd Respondents are by virtue of the Police Act 2020, Section 4, empowered to investigate, arrest, interrogate, search and detain suspects, however such exercise of powers must be done in accordance with the law. The facts as gleaned from the unchallenged affidavit evidence of Applicant, against the 1st – 3rd Respondents, is that the Applicant was arrested sequel to his complaint of robbery incident on 28/4/2019 at his place of work, that is, the 4th Respondent and has been in custody of the 1st – 3rd Respondent, deprived of access to his lawyers, medication and refusal of bail, since his arrest on 28/4/2019. He alleged that he was in custody of the 1st – 3rd Respondent for a period of 20 days. Clearly, this period of detention, 20 days and counting is more than the prescribed period by the provisions of Section 35 (a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) to be taken to a competent court of law. The failure of the 1st – 3rd Respondent to comply with the prescribed Provisions of the law, is in breach of the Applicant's right to person personal liberty as contained under Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended). Also denial of access to medication is a violation of his right to dignity of person as guaranteed by Section 34 of Constitution of the Federal Republic of Nigeria 1999 (As Amended)

The case against the 4th Respondent, by the Applicant is that the 1st – 3rd Respondent were acting on the instruction of the 4th Respondent not to release the Applicant until he confess and his goods worth ₦8 Million are

recovered. These facts are contained in Paragraphs 6 – 13 of the Applicant's further and better affidavit of 3/6/2019.

The 4th Respondent on the other hand, by their Paragraphs 4 (b, c, d, e, f, g, h, i, and j) of their further affidavit filed on 7/6/2019, maintained through the Managing Director, that he never met the deponent on behalf of the Applicant neither did he instruct the 1st – 3rd Respondent to detain the Applicant.

In this instant, the Applicant by his Para 19 of his affidavit in support of the application stated that he made the complaint to the Police, and was rather detained. Clearly, in all of these, it was not the 4th Respondent, Managing Director or any other that made the complaint to the Police.

It is trite that the burden of proof lies on the Applicant who seeks Enforcement of Fundamental Rights to prove by credible evidence that his right has been violated. See case of Onah Vs Okenwa (2010)7 NWLR (PT. 1194), Pg 512 @ 536. In this instance, as against the 4th Respondent, it is the holden of this court that the Applicant has failed to show sufficiently credible evidence that the 4th Respondent did make any complaint to the Police, which in any event, the law permits a person in performance of his Civil duty to make a formal complaint to any law enforcement agencies in effort to stop the commission of a crime. And also failed to show any link to the 1st – 3rd Respondent by the 4th Respondent showing that by the conduct through the Managing Director the 4th Respondent instigated the 1st – 3rd Respondent to forceable detain the Applicant until his goods are recovered.

Consequent upon this finding, I hold that the Applicant has failed to prove this claim against the 4th Respondent.

Now to the reliefs.

The Reliefs 1 and 2 are Declaratory Reliefs, it is settled law that in an application for Declaratory Reliefs, the Applicant must satisfy the court with cogent and credible evidence that he is entitled to such declaratory reliefs. Therefore, where the Applicant in his evidence failed to prove his claim for declaratory relief, the claim must be dismissed. See the case of Agbana Vs Owa (2004) 13 NWLR (PT. 889) @ 17.

The facts relied on by the Applicant are contained in paragraphs 8 – 28 of the affidavit in support of his application and the annexed Exhibit. The 1st – 3rd Respondent did not deny or controvert the averments and this leaves this court in line with Order VIII Rule 3 of FREP Rules, 2009, to presume that the 1st – 3rd Respondents have accepted the facts as true as presented by the Applicant. And having failed to counter the averments of the Applicant, I have no difficulty in finding that these reliefs as contained in reliefs 1, 2 have been sufficiently proven by the Applicant to warrant the court to hold and indeed declared that the Applicant is entitled to the relief 1 and 2, accordingly granted as prayed.

On Relief 3, an Order of court directing the 1st and 2nd Respondent to release forthwith the Applicant from their detention. In this instant, there is no facts stated before this court that the Applicant is still in custody of the 1st, 2nd Respondent or 3rd Respondent. By Para 27 of the Applicant affidavit in support, the Applicant stated that he has been detained for 20

days since his arrest, but no mentioned if he is still in custody of the 1st – 3rd Respondent till the date of the hearing of this application. In the circumstance, this court is unable under the circumstance; make such order which is bereft of sufficient fact to enable it to do so. Therefore, this relief fails.

On The Alternatively Reliefs.

On Relief 4, consequent upon the findings of the court in respect of relief 3 above, this relief 4, should fails.

On Relief 5, an order to compelling the 1st /2nd Respondent to maintain status quo. It is trite that a court must not allow itself to be used to shield a party against criminal investigation, to do so will amount to an interfering with the powers of the 1st/2nd Respondent in the exercise of their statutory powers of investigation, arrest, detention and prevention of crime. In any event, it is not the practice of court to issue a judicial fiat to prevent the 1st /2nd Respondents from exercising its statutory powers. See case of A.G. Anambra State Vs Chris Uba (2005) 15 NWLR (PT.947) 44 @ 67 Para F – G; therefore, the court will refuse the grant of this relief.

On Relief 6, an Order of sum of ₦50,000,000.00 (Fifty Million Naira Only) as damages to the Applicant. General Damages are damages which the law implies or presumes to have accrued from the wrong complained of. And it is at discretion of the court to award general damages and what sum of money will be reasonable awarded in the circumstance. See case of Taylor & Vs Ogheneovo (2011) LPELR- 8955 (CA). The court having found that the Applicant Fundamental Right has been violated, the Applicant is

entitled to damages and in awarding the sum, I shall exercise my discretion.

On Relief 7, an order mandating the Respondents to jointly and or severally tender an apology. This court having award damages against the 1st – 3rd Respondent, finds that this relief though permitted by the Provisions of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) so to do, will refrain from making this order.

In summary, it is the finding of the court as follows: -

- (1) Reliefs 1 and 2 of the Applicant are hereby granted as prayed.
- (2) Reliefs 3, 4, 5 are hereby refused and dismissed.
- (3) On Relief 6, the 1st – 3rd Respondent are hereby ordered to pay the Applicant the sum of ₦1,000,000.00 (One Million Naira as damages).

This is the Ruling of the court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

29/4/2022

APPEARANCE

DOUGLAS NAJIME ESQ FOR THE APPLICANT

OGUCHE AGBONIKA ESQ FOR THE 4TH FOR THE RESPONDENT

NO APPEARANCE FOR THE 1ST – 3RD RESPONDENTS.

