

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS :JANET O. ODAH & ORS

COURT NUMBER :HIGH COURT NO. 14

CASE NUMBER :SUIT NO: CV/1125/2020

DATE: :MONDAY 27TH JUNE, 2022

BETWEEN:

**1. DR. ABDUL JHALIL TAFAWA } APPLICANTS
BALEWA }
2. XPAT CAPITAL LTD. }**

AND

**1. NIGERIA POLICE FORCE } RESPONDENTS
2. DCP. UMAR MAMMAN SANDA }
3. ROYAL EXCHANGE }
ASSURANCE PLC. }
4. MR. ALAABA SUNDAY }**

JUDGMENT

The Applicants by a Motion on Notice dated 18th February, 2020 brought pursuant to Order 11, Rule 1 of the Fundamental Right (Enforcement Procedure) Rules 2009, section 34, 35, 36, 41, 44 and 46 of the Constitution of the Federal Republic of Nigeria, 1999, Amended, Articles 3, 4, 5, 6, 7, 12 and 14 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004 and under the inherent jurisdiction of this court pray for the following:-

1. An Order for Perpetual Injunction Restraining the Respondents by themselves or their agents or any other law enforcement agent(s) in Nigeria from further embarrassment,

harassment, intimidation, invitation or attempt to arrest or detain of the Applicants at the prompting of the 3rd and 4th Respondents with respect to this Civil Transaction between the Applicants' XPAT Capital Ltd. and the 3rd Respondent.

2. An Order of this Honourable Court stating that the incessant harassment, embarrassment of the Applicants by the Respondents is a breach of their Fundamental Right as guaranteed under sections 34, 35, 36 and 41 of Nigeria's 1999 Constitution as amended.
3. An Order of Court condemning the actions of the Respondents to be illegal, unconstitutional to have conducted themselves as stated above in paragraph 4.

4. An Order of this Honourable Court directing the 3rd Respondent to pay the Applicants the sum of N20,000,000.00 (Twenty Million Naira) only as cost of instituting this matter.
5. And for such further order or Orders as this Honourable Court may deem fit to make in this circumstance.

In support of the application is a 21 paragraph affidavit, duly deposed to by Dr. AbduljalilTafawaBalewa the 1st Applicant in this suit.

It is the affidavit of the deponent that sometime in last quarter of 2019 the 3rd and 4th Respondents engaged the services of the 2nd Applicant through the 1st Applicant for the purpose of securing an

assurance broker business at Federal Inland Revenue Service.

The Applicants avers that they negotiated and agreed that the sum of N50Million shall be the professional fee for the rendering of the services sought.

The Applicants avers that the sum of N7.5 Million was advanced to them and they engaged all their professional prowess thereto.

The Applicants avers that during the said presentation of the 3rd Respondent before Federal Inland Revenue Services, it became obvious that the 3rd Respondent's paper were not on time and not complete.

That the 3rd Respondent ought to have perfected its papers at Federal Inland Revenue Services and same must be done on or before February 2019, but failed to do so till June 2019, thereby depriving the 3rd Respondent, the opportunity of being short listed but will be shortlisted in 2nd quarter of 2020.

The Applicants avers that to their greatest surprise he received a call from the 2nd Respondent at the instruction of 1st, 3rd and 4th Respondents for the 1st Applicant to report to 1st Respondent on 12th of February on a case of obtaining money by false pretense. A copy of the letter is herein attached and marked Exhibit “1”.

The Applicants avers that upon receipt of the said letter, he asked the company secretary to report at

the 1st Respondent and it was at the 1st Respondent, that the 2nd, 3rd and 4th Respondents demanded that the 1st Applicant should return the sum of N7.5Million consultancy fee services paid to the 2nd Applicant.

It is further the averment of the Applicants that, the activities of the 1st and 2nd Respondents does not involve money recovery in a civil transaction.

That the 1st and 2nd Respondents have continuously made life miserable for the 1st Applicant hence this action.

That the illegal acts of the Respondents towards them as narrated above has equally led to the shooting up of his blood pressure.

That his life and that of his family is presently in danger at the instance of the Respondents.

In compliance with the Rules of this court a written address was filed wherein a sole issue was formulated for determination to wit:-

“Whether the Applicants have made out a case of infringement of their fundamental Rights by the Respondents pursuant to the provision of chapter IV of the Nigeria Constitution.”

It is the submission of learned counsel that the Applicants have fully complied with the requirements of the law in bringing this application vide his affidavit in support, the 2nd Applicant copiously deposed to the facts

grounding this application and which constitute the violation of their fundamental Rights Complained of.

Counsel avers that the Applicants have further shown that 1st – 2nd Respondents having turned themselves into willing tools in the hands of the 3rd and 4th Respondents who are still threatening to arrest and detain the Applicants for no other reason other than that the Applicants and the 3rd and 4th Respondents entered into a purely commercial and civil transaction.

Counsel states that the courts had ruled against the penchant of some members of the public who delight in the illegal use of members of the law enforcement agencies as debt collection or to settle personal scores arising purely from civil

matters. *IGWE VS. EZEANOCHIE (2000) 43 WRN 1 at 155 was cited.*

Counsel urged the court to resolve the lone issue in favour of the Applicants and to hold that the Fundamental Rights of the applicants have been or is about to be violated, continue to be violated are in imminent danger of being further violated unless by an Order of this court.

The 1st, 2nd and 4th Respondents did not file counter affidavit to the application in question.

The 3rd Respondent however filed counter affidavit deposed to by Haruna Monday a Litigation Secretary in the law firm of chairs Hills Solicitors. It is the deposition of the 3rd Respondent in his 4 paragraph affidavit that the

3rd Respondent did not at anytime engage the services of the Applicants for the purpose of securing any assurance broker business with the Federal Inland Revenue services.

That in particular response to paragraph 9 and 10 of the affidavit in support of the originating motion, she knows as a fact that the 3rd Respondent never agreed to pay the sum of 50 Million Naira to the Applicants nor did it advance the sum of N7,000,000.00 (Seven Million Naira) to the 1st Applicant or anybody else.

It is the averment of the 3rd Respondent that it never made or caused to be made a report against the Applicants to the 1st Respondent. That the 3rd Respondent does not have any connection or link to the personal health issue of the 1st Applicant.

That the 3rd Respondent is not liable to the Applicants' claim in this action.

In line with the law, a written address was filed along with the counter wherein 2 issues were formulated for determination to wit:-

- a. *Whether the Applicants Fundamental Rights were infringed or are likely to be infringed by the 3rd Respondent.*
- b. *Whether the Applicants are entitled to the reliefs sought in this application against the 3rd Respondent.*

On issue 1, *Whether the Applicants Fundamental Rights were infringed or are likely to be infringed by the 3rd Respondent.*

It is the contention of 3rd Respondent that it did not at anytime petition the Applicants to the 1st Respondent or even cause any report to be made against the Applicants. And that assuming but not conceding that the 3rd Respondent cause a report to be made against the Applicants to the 1st Respondent, that simpliciter cannot be held to be an infringement or a likely hood of infringement of the Applicants' Fundamental Rights.

FAJEMIROKUN VS COMMERCIAL BANK LIMITED & ANOR (2009) LPELR – 1231 (SC) was cited.

On issue 2, **Whether the Applicants are entitled to the reliefs sought in this application against the 3rd Respondent.**

Counsel submits that it is the law that he who asserts must prove in order to be entitled to any remedy before a court. Section 131 (1) of the Evidence Act, 2011 was cited.

Counsel respectfully urge the court to refuse the application of the Applicants for the following reasons:

That the Applicants have not shown in any way that their rights were infringed.

The Applicants have not shown that the 3rd Respondent instigated the invitation of the 1st Respondent in connection with a criminal investigation by the 1st and 2nd Respondents, and that the Applicants are trying to use this court as a shield from criminal investigation.

COURT:-

Procedurally speaking, application for enforcement of Fundamental Human Right is made by way of Motion on Notice stating grounds and affidavit in support which serves as evidence.

The enforcement of Fundamental Rights in Nigeria has a special procedure as provided by the Fundamental Rights Enforcement Procedure Rules 2009. Order 2 Rule 1 of the said Rules provides as follows:-

“Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and people’s Rights (Ratification and Enforcement) Act and to which he is entitled

has been, is being or is likely to be infringed may apply to the court in the state, the infringement occurs or is likely to occur for redress”.

I shall beam my search light on the application to ascertain whether a case of breach of Fundamental Right is established.

Be it known that it is the constitutional duty of court to develop the common law, and to so do that within the matrix of the objective and normative value suggest by the constitution and with due regard to the spirit, purport and object of the bill of rights.

It is the evidence of Applicant as distilled from his affidavit that he received a call from the

2nd Respondent at the instruction of 1st, 3rd and 4th Respondents for the 1st Applicant to report to 1st Respondent on the 12th of February, on a case of obtaining money by false pretense.

It remains trite that facts deposed to in affidavit that are not challenged are deemed admitted and acted upon by the court. See *MADU VS THE STATE (2011) LPELR 3973*.

Once a party has averred to facts in an affidavit, it behoves on the adverse party to contradict those facts in a counter affidavit if they do not represent the true position. The exception to this general rule however is where averments in the affidavit in support of an application are contradicting or if taken together are not sufficient to sustain the

Applicant's prayers, then a counter affidavit is most unnecessary.

See *CHIJIJOKE AGU VS. OKPOKP (2009) LPELR 8280 (CA)* See *ORUNLOLA VS ADEOYE (1996) NWLR (Pt. 401)*.

The question that naturally follow is, from the affidavit in support of the application in view, can it be said that the Applicant has established the case of breach of its Fundamental Human Right against the Respondents?

Applicant stated copiously that he was invited by the 2nd Respondent to their office Force CID area 10, third floor, Force Headquarter.

That 1st and 2nd Respondents has continuously made life miserable for the 1st Applicant.

That his life and that of his family is presently in danger.

On their part, 1st and 2nd Respondents did not file any process before this court.

On the part of the 3rd Respondent (Royal Exchange Assurance Plc.), it contended that it did not at any time petition the Applicants to the 1st Respondent or even cause any report to be made against the Applicants.

The Applicants is seeking an Order for Perpetual Injunction restraining the Respondents from further embarrassment, harassment, intimidation, invitation or attempt to arrest or detain the Applicants. From what has played out here, I only

in evidence saw letter of invitation written to the Applicants by the 2nd Respondent.

Indeed, it takes two to speak the truth, one to speak and another to hear. In this case both Applicants and Respondents have spoken and the Judge has heard from all.

The liberty to make any accusation is circumscribed both by the right to make it, the duty not to injure another by the accusation and the right of any appropriate redress in the court.

AKILU VS. FAWELUMI IN (No. 2) (1989) (Pt. 102) 122

It is true that the police have a duty to protect life and property and to detect crime. All these must be done within the confines of the law establishing

the police and the constitution of Federal Republic of Nigeria 1999 as amended and under the Police Act section 4 of the police Act provides thus:

“The police shall be employed for the prevention and detention of crime, the apprehension of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.”

It is certainly not merely of some importance but it is of fundamental importance that justice should

not only be done, but should manifestly and undoubtedly be seen to be done.

A wrongdoer is often a man who has left something undone, not always one who has done something...

Richard Joseph Daley, an American Politician who lived between 1902–1972 once said, “Get the thing straight once and for all” the policeman isn’t there to create disorder, the policeman is there to preserve disorder.

Ignorance of law excuses no man, not that all men know the law, but because it is an excuse everyman will plead, and no man can tell how to refute him.

The procedure for the enforcement of Fundamental Human Right certainly is not an outlet for fraudsters to claim innocence and seek protection after committing crime. It is a procedure opened to frank and upright people whose inalienable rights would have been or about to be infringed upon by the very people who have the power to protect such rights or other persons who wield other unauthorised powers.

A careful perusal of the Applicants' affidavit will reveal that there is no single document to buttress the incessant harassment, embarrassment, intimidation or attempt to arrest or detain the Applicant.

What more... Exhibit "1" has not shown anything tying 1st Applicant.

I am also minded to observe that eventhough the other Respondent i.e Police has not filed counter affidavit, the 3rd Respondent has debunked ever writing any petition to the Police necessitating any such investigation at their instance.

The Police can invite any person to answer questions... Applicants who has not answered the call of the Police, has now filed the instant application which clearly is preemptive, shall not be allowed to use the instrumentality of the judiciary as a shield. Applicants' suit is clearly targeted at stalling investigation against him. This is not the essence of law.

The 1st and 2nd Respondents by virtue of the law creating it can invite any person such which they have performed via Exhibit "1".

The Applicants affidavit revealed that he is indeed economical with the truth.

I shall therefore dismiss this originating motion for above reasons. Accordingly, Suit No. **FCT/HC/CV/1125/2020** is hereby dismissed.

Justice Y. Halilu
Hon. Judge
27th June, 2022