

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/2685/2019

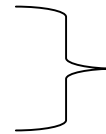
DATE: 26/5/2022

BETWEEN:

AKINROPO AKINWANDE.....APPLICANT

AND

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. AKIN ARIBISALA**
- 3. AKIMBOLA BADEMOSI**



DEFENDANTS

APPEARANCE:

C. I. Nkpe Esq for the Applicant.

Respondents absent and unrepresented.

JUDGMENT

By an amended Originating Motion filed on the 13th day of July, 2020, brought pursuant to order 11 Rules (1), (2), (3), (4) and (5) of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Sections 34, 35, 41 (1), and 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 4, 5, and 6 of the African Charter on

Human and People's Rights; the Applicant prayed the Court for the following reliefs:-

- 1) A Declaration by this Honourable Court that any involvement by the 1st Respondent and his officers in a purely contractual and civil matter is void and unconstitutional, as it is not within the schedule of duties.
- 2) An Order of this Honourable Court, restraining the Respondents, their officers and privies, from arresting, intimidating, detaining in any form whatsoever, or interfering and violating the Fundamental Rights of the Applicant, in relation to the transaction that has given rise to this Application.
- 3) And for such further, or other orders as this Honourable Court may deem fit to make in the circumstances.

The Application is accompanied by a statement pursuant to order 11 Rule 3 of the F.R.E.P Rules 2009, containing the name, address and description of the Applicant.

The grounds upon which the reliefs are sought are as follows:-

- i. By virtue of Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) any person who alleges that any of the provisions of Chapter IV of the 1999 Constitution as amended has been, is being or is likely to be contravened in any part of Nigeria may apply to the High Court within his jurisdiction for redress.
- ii. The Applicant is a Nigeria citizen and entitled to his right to personal liberty, freedom of movement as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria as amended.

- iii. The Applicant has not committed any Criminal offence known to law and has not been charged for any offence whatsoever.
- iv. The transaction between the Applicant and the 2nd and 3rd Respondents is purely civil nature.

In support of the Application is an Affidavit of 26 paragraphs deposed to by the Applicant himself, as well as a verifying Affidavit of 4 paragraphs.

Equally filed in support is a written address filed on 13/7/2020.

Meanwhile, in opposition to the Application are two separate Counter Affidavits of the 2nd and the 3rd Respondents respectively, but, joined together, with annexures marked Exhibits A1, A2 and A3 respectively as well as a written address.

In response to the two separate Counter Affidavits of the 2nd and 3rd Respondents, the Applicant filed two separate further Affidavits on 13/7/2020, and several Exhibits.

In the Applicant's address in support of the originating Motion, a sole issue for determination was formulated thus:-

"Whether from the facts and circumstances of this case, the Applicant has made out a case for the enforcement of his Fundamental Rights?"

In arguing the issue learned Applicant's Counsel referred the Court to the provisions of Section 46 (1) of the Constitution of the Federal Republic of Nigeria (1999 (as amended) and submitted that in the present case, the Applicant lives in constant apprehension of the breach of his Fundamental Rights and has sought refuge in this Honourable Court.

Reliance was placed on case of **DIAMOND BANK PLC V OPARA (2018) 7 NWLR (PT. 1617) @ PAGE 115-116 PP H-B, PER BAGE, JSC;** Order

2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009, and the cases of **GOVERNOR OF BORNO STATE V GADANGARI (2016) 1 NWLR (PT. 1493) 396 (CA); ADIMORA V AJUFO (1988) 3 NWLR (PT. 80)**; and Section 35 of the 1999 Constitution (as amended).

Submitted, that the duties of the police include the detention and prevention of Crime as well as the prosecution of suspects involved in the Commission of Crimes, but certainly do not in any way include recovery of funds in respect of Civil and contractual relationships between individuals.

That the 2nd and 3rd Respondents herein have threatened to use officers of the 1st Respondent to arrest him. That the Supreme Court and other Courts of the land have made notable pronouncements and have eloquently kicked against using the Police or other security agencies as debt recovery agencies. Reliance was placed on the cases of **EFCC V DIAMOND BANK PLC (2018) 8 NWLR (PT. 1620) PG 80, PP D-E, PER Bage, JSC; COMPTROLER OF PRISONS V ADEKANYE (1999) 10 NWLR (PT. 623) 400 AT 426-467, PARAS, G-B. (CA); OKONKWO V OGBODU (1996) 5 NWLR (PT. 449) 420 @ 435, PARA F; NWANGWU V DURU (2002) 2 NWLR (PT. 751) 265 @ 279, PARAS E-G; IGWE V EZEANOCHIE (2010)7 NWLR (PT. 1192) at 61.**

Submitted in that regard that the arrangement between the Applicant and 2nd Respondent is Civil and Contractual and the use of the Police to arrest and detain the Applicant will infringe on his fundamental Rights as guaranteed under Sections 34 and 35 of the 1999 CFRN (as amended).

Relying on the Applicant's supporting Affidavit, Learned Counsel finally urged the Court to hold in the Applicant's favour and grant the reliefs sought.

Meanwhile, the 2nd and 3rd Respondents formulated two issues for determination to wit:-

1. Whether from the circumstances and facts of this case, the Applicant has put before this Honourable Court enough material facts to substantiate a breach of any of the Rights contained in chapter IV of the Constitution of the Federal Republic of Nigeria which would entitle the Applicant to an action under the Fundamental Rights (Enforcement Procedure) Rules, 2009. And.

2. Whether this Honourable Court may grant the reliefs sought by the Applicant.

It is submitted by Learned Counsel that the supporting Affidavit of the Applicant shows nothing other than the Applicant's chronicle of how he fraudulently received the sum of ₦1,650,000 (One Million Six Hundred and Fifty Thousand Naira) only from the 2nd Respondent, and has therefore failed to establish the allegation of the breach of any of his Fundamental Rights as contained in Chapter 4 of the Constitution.

Submitted in that regard that for an Applicant to succeed, he must place sufficient material facts before the Court to prove the alleged breach.

Reliance was placed on the case of **FAJEMIROKUN V. C. B (CT) NIG. LTD (2002) 10 NWLR (PT. 774) P95 at 110 PARAS F-G.**

Submitted further that 2nd and 3rd Respondents did not in any way threaten to report the Applicant to the 1st Respondent, and that from their Affidavits, parties were still in the process of negotiation and fixed a time for a meeting to discuss a way forward when the Applicant ran to this Honourable Court to file this process.

That a mere statement from the Applicant of an allegation of threat is not enough.

That who said what, what was said, how and where those threats were made have all been left to the imagination of this Honourable Court.

Learned Counsel cited the case of **OKAFOR V LAGOS STATE GOV'T (2017) 4 NWLR (PT. 1556) 404 at 433, paras G-H**, in support of his submission.

That assuming the 2nd and 3rd Respondents have in fact made a complaint to the 1st Respondent against the Applicant, would this Honourable Court have the powers to grant the Applicant's relief No. 2 Counsel answered in the negative.

Reference was made to Section 4 of the Police Act, to argue that no Court has the power to restrain the 1st Respondent from performing their Constitutional duties.

Reliance was placed on the case of **IGP V UBAH (2015) 11 NWLR (PT. 1471) PG 450, P.B. 443, PARA A-D**.

The Court is urged to strike out relief 2.

Learned Counsel then referred the Court to the Applicant's reliefs as contained in the Originating Motion filed on 19/8/19, to argue that the said reliefs, particularly reliefs 1 and 3 are not relevant or pertaining to any of the provisions of Chapter 4 of the CFRN.

Reliance was also placed on the cases of **IHENACHO V N. P. F (2017) 12 NWLR (PT. 1580), P424 @ 456, PARAS D-G; EMAKA V OKOROAFOR (2017) 11 NWLR (PT. 1577) page 410**.

Submitted further that non of the reliefs have any connection to the rights in Chapter 4 of the FCRN, and that the Applicant herein who is seeking an

equitable remedy to protect him from being prosecuted after soiling his hands cannot be protected since the maxim says he who comes to equity must come with clean hands. And that the Applicant's hands are not clean and equity cannot therefore aid him.

That in the instant case the Applicant used the 3rd Respondent's religious faith and compassion to gain her trust when Applicant collected money from the 2nd Respondent under the pretext of giving him a political appointment.

And that after he received the money claimed that the money was not transferred to him on the agreed date, and did not transfer the money back to the 2nd Respondent, if his claims of the 20th November 2018 being the deadline was true. That Applicant took the money and continued to lie to the 2nd and 3rd Respondents.

That Applicant has now come before this Honourable Court hoping that his activities will be protected by this Court and that this is a Court of justice and it will not support any illegality.

In conclusion, Learned Counsel urged the Court to dismiss this Application with costs in favour of the 2nd and 3rd Respondents for filing this frivolous Application before this Honourable Court.

In determining this Application, I shall raise a sole issue for determination to wit:

"Whether the Applicant herein has made out a case to be entitled to the reliefs sought?"

Now Section 46 (1) of the CFRN 1999 (as amended) provides:-

46. (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

See also the cases of **ZIRA V AWOLOWO & ANOR (2006) LPELR-11853 (CA); DANGTOE V CIVIL SERVICE COMMISSION, PLATEAU STATE & ORS (2001) LPELR-959 (SC) in the case of EBO & ANOR VOKEKE & ORS (2019) LPELR- 48090 (CA)**, the Court held as follows:-

"A party must place before the Court facts necessary, explicit adequate and sufficient to bring his case within the classes of cases in which Court may act in his favour....." Per **DONGBANMENSEM, JCA at pp42-43, paras B-D.**

Now, the facts predicating this Application were aptly captured by the Applicant listed as i-vi in the Applicant's Originating Motion to wit:-

- i. The 2nd Respondent approached the Applicant, who is a business man and a consultant to help secure a political appointment. The Applicant entered into a written contract with 2nd Respondent and gave him his bill of charges of which part of it was to be paid upfront on or before the 20th of November, 2018.
- ii. The 2nd Respondent failed on his part to provide the money on or before the agreed date which frustrated the contract and as a result, his slot was handed to another person.
- iii. The 2nd Respondent then paid the sum of ₦500,000.00 in three trenches on the 20th, 21st and 22nd of November, 2018 respectively. He also deposited the sum of ₦150,000.00 for the facilitation of the political appointment, which culminated into a total sum of ₦1,650,000.00 paid by the 2nd Respondent to the Applicant.
- iv. Unknown to the Applicant, the 2nd Respondent claimed he had loaned the sum of ₦2,000,000.00 from a money lender at an

exorbitant interest rate which runs till date. He claimed it was out of this loaned sum that he paid the sum of ₦1,650,000.00 to the Applicant.

- v. The 2nd Respondent is now being hassled by the money lender to repay the borrowed sum and its accrued interest. The 2nd and 3rd Respondents have now in turn, turned on the Applicant for the recovery of the sum of ₦4,100,000.00 which is the principal sum of 2 Million borrowed from the money lender plus accrued interest at 15% on a monthly basis since November 2018.
- vi. The 2nd and 3rd Respondents have threatened the Applicant, and have gone a step further to threaten the use of the 1st Respondent to intimidate, harass and arrest the Applicant.

Similarly, Applicant avers in paragraphs 13, 14, 15, 16, 17, 18, 22 and 23 of his supporting affidavit thus:-

"13. Subsequently, the 2nd Respondent approached me that the money he gave to me for the facilitation of the political appointment, was out of the ₦2,000,000.00 he obtained from a money lender. This was an action which i totally had no knowledge about and would not have supported if i had prior information, nonetheless the deed had already been done. He told me that the money lender was on his tail to repay the loaned sum which kept accumulating interest.

14. Out of sympathy, and knowing the length money lenders would go to retrieve their monies from debtors, i offered to assist my client raise the money pay back this loan. I was not a privy to this contract between my client and the money lender and i do not know what terms and how much interest he had gotten the loan.

15. In a bid to assist my client and out of good faith, i decided to put up my house for sale, so as to give part of the proceeds to the 2nd Respondent for the

settlement of his debt. I got the services of agents to facilitate sale, so also did the 2nd Respondent bring agents to inspect the property and he also has a copy of the Certificate of Occupancy.

- 16. Despite my efforts and good intentions to salvage my client from this debt, he and the 3rd Respondent have blamed me for the misfortunes of the 2nd respondent, and have threatened to make life unbearable for me. They have threatened to use the officers of the 1st Respondent in their bid to actualize their threats.***
- 17. The only agreement I entered into and I am privy to, is that between myself and the 2nd Respondent, which was breached and also frustrated by the 2nd Respondent. The 2nd Respondent wants to hold me responsible and accountable for his running debt with the money lender.***
- 18. The 1st Respondent is not a debt recovery agency and should not be used by the 2nd and 3rd Respondents in this case to recover claimed monies owed or for enforcement of contracts. The 2nd Respondent knows the proper channel to use when for recovery of any sum(s) owed.***
- 22. The continued harassment and threats by the 2nd and 3rd Respondents have led to the serious apprehension of the breach of my Fundamental Right to personal liberty, freedom of movement and dignity of the human person.***
- 23. Unless this Honourable Court restrains the Respondents from arresting, harassing and threatening me, my fundamental Rights are likely to be breached as I risk arrest and detention".***

Now, from the averments contained in 2nd Respondent's Counter Affidavit, it is shown therein particularly in paragraphs 6-11, among other things that it was the 3rd Respondent that introduced him to the Applicant over a job

offer on the ground that 2nd Respondent was a more suitable person for the job. The consideration was a payment of the Sum of ₦3, 600,000. By the 2nd Respondent to the Applicant in two instalments of ₦1,800,000 each before the Appointment was secured.

According to 2nd Respondent in his paragraph 17, he finally got a loan of ₦2,000,000.00 (Two Million Naira) only from money lenders on an interest of ₦15% (300,000) per month until the money is liquidated.

That following his meeting with the Applicant at Applicant's house Applicant assured him that the appointment contacts at Aso Rock were waiting for the money to be brought so that his name would be included in the list, with the promise from the Applicant that if 2nd Respondent did not get the appointment he would refund his ₦1,800,000.00 and pay interests that would have accrued between 20th November, 2018 and 19th January, 2019.

The Agreement executed by the parties is annexed as Exhibit A.

According to 2nd Respondent in his paragraph 31, all the money paid to the Applicant was transferred to Applicant's U.B.A Account.

Meanwhile, 2nd Respondent avers in paragraphs 33, 34, 35, 36, 39, 40, 41, 43, 45 thereof as follows:-

- 33. That after the money was paid, I told the Applicant that I was totally exhausted and did not have any immediate hope of getting the remaining ₦150,000. The Applicant therefore said he would borrow me the ₦150,000. Add it to the money but I should look for it and pay him back. I agreed.**
- 34. We started waiting for the announcement to be made by the president.**
- 35. The announcement was never made.**
- 36. When the announcement was not made till the second week of the month of January, 2019, I become apprehensive and called the Applicant who continued to assure me that the announcement would be made. Still**

it was not made and even if any announcement was made by the president, my name was not included.

39. *The announcement was never made and the Applicant continued to tell me that if the announcement is not made, he would refund the money with all interests that have accrued up until the time of payment. I continued to make a demand for the money to be repaid.*

40. *This Continued until sometime in the month of July, 2019 when my name had not been announced and the interest on the ₦2,000,000.00 loan had risen to ₦1,800,000.00 making a total of ₦3,800,000.00. I demanded that the Applicant refund the money and that i did not need the appointment anymore.*

41. *That contrary to paragraphs 15 and 16 of the Applicant's Affidavit, the idea to sell the Applicant's property was not out of sympathy but as a result of my demands that my money should be paid back since I was not interested in the Appointment anymore. Though the Applicant agreed to pay back the money he received from me and the interests but he said since he had no cash, he would sell his property to raise money, the printout of our Whatsapp conversation is attached to this Affidavit and marked Exhibit R2.*

The Printout is a product of the information I sent from my Samsung Phone to HP Printer which were both in perfect working condition at the time it was printed.

43. *That I know of a fact that the agents took prospective buyers who met the valuation of the Applicant's property but the Applicant was never satisfied with the buyers. He continued to increase the property valuation from ₦8,000,000.00 to ₦10,000,000.00 to ₦12,000,000,00 and then to ₦15,000,000,00 knowing well that the property was not worth such amount.*

45. That by August, the total amount had rise to \$4,100,000. I therefore requested for a meeting with the Applicant and the 3rd Respondent for us to discuss the way forward for the repayment of the loan. The 19th day of August, 2019 was fixed for the meeting”.

However, on the allegation of the Applicant that 2nd Respondent threatened to report the Applicant to the 1st Respondent, 2nd Respondent in paragraphs 48, 49, and 50 clearly denied that and stated that he did not threaten whether verbally, in writing or by conduct or in any way to report the Applicant to the 1st Respondent and he was always polite with the Applicant because he wanted to get his money back.

2nd Respondent further avers in paragraphs 50, 51, 52, 53, and 54 thereof as follows:-

"50. I have also never reported the matter to the 1st Respondent or any other law enforcement agency. Although I regret that now.

51. That now i know for a fact that the Applicant intended from the onset to dupe me of my money.

52. That I also know of a fact that the Applicant has run to the Court to prevent the 1st Respondent from investigating his Criminal activities and to also attempt not to refund my money with the interest.

53. That the money has not been paid till now and interests continue to accrue on the loan.

54. That the grant of the reliefs in the Applicant’s Affidavit will prejudice the Respondents.”

Meanwhile, on her part 3rd Respondent confirmed in her Counter Affidavit particularly in paragraph 15 when she informed 2nd Respondent about the Job offer and after some thoughts 2nd Respondent accepted to take the offer.

3rd Respondent also confirmed the meetings that took place between her, the 2nd Respondent and the Applicant in that regard, in respect of the

agreement but that despite payments made to the Applicant the announcement by Mr. President was never made.

3rd Respondent further avers in paragraphs 39, 40 and 41 as follows:-

- "39. The Applicant then told me that he was always ready to pay and that since he did not have the cash to pay, he would put his house in Karu, Abuja for sale, sell the apartment and refund the loan and all the interests. That contrary to paragraph 15 and 16 of the Applicant's Affidavit, the idea to sell the Applicant's property was not out of sympathy but due to demands from myself and the 2nd Respondent for the Applicant to pay the money back with interests.**
- 40. That contrary to paragraphs 16, 18 and 19 of the Applicant's Affidavit, I did not threaten the Applicant neither did I threaten whether verbally, in writing, by conduct or in any way to report the Applicant to the 1st Respondent.**
- 41. That I did not mention or suggest to report the Applicant to the 1st Respondent. That now I know the Applicant only felt I intended to arrest him on the 19th day of August, 2019 under the pretext of having a meeting."**

In response to the 2nd and 3rd Respondent's Counter Affidavits, the Applicant denied their averments and further states that from the said Counter Affidavits it is evident that they are intending to use men of the 1st Respondent to harass and intimidate him.

In fact, Applicant averred in paragraphs 13, and 17 of his further Affidavit to 3rd Respondent's Counter Affidavit that the transaction giving rise to this Application is purely Civil and that they are at liberty to take out a Civil suit against him to recover any debt against him instead of using officers of the 1st Respondent to harass and intimidate him.

In this regard i have considered the submissions of learned Counsel in the address in support of the Application as well as the authorities cited in that regard that law enforcement agencies are not debt recovery agencies.

I refer to the case of **E. F. C. C V DIAMOND BANK PLC (Supra); COMPTROLLER OF NIGERIAN PRISONS V ADEKANYE (SUPRA)** to name a few, cited in Applicant's address, which is the position of the law in that regard.

Having said that, where an Applicant alleges threat or likelihood of threat to his fundamental Rights to move the Court to protect those Rights, there must be cogent and credible evidence presented by the Applicant particularly in his supporting Affidavit to prove there alleged or threatened breach or violation of those rights.

Please see again the case of **EBO & ANOR V OKEKE & ORS (Supra)**.

In the instant case having gone through the Applicant's Supporting Affidavit as well as Exhibits tendered, I do not see any proof that the 2nd and 3rd Respondents have threatened to use men of the 1st Respondent to intimidate and harass him.

Moreso, there's no evidence to show that there's any complaint made to the 1st Respondent by the 2nd and 3rd Respondents with respect to this case to warrant this Honourable Court to grant a restraining order, even though i quite agree with the Applicant that the agreement or transaction between the parties in this case is purely contractual and civil in nature.

Even at that, law enforcement agencies cannot be prevented from carrying out their duties which include investigation of any case where there's reasonable suspicion of commission of a crime.

Therefore, in the instant case, since no complaint has been laid before the 1st Respondent by the 2nd and 3rd Respondents, I would have to agree with the submissions of Learned Counsel to the 2nd and 3rd Respondents in the address, particularly paragraphs 3.5- 3.13 thereof, and the authorities cited that a mere statement from the Applicant of an allegation of threat is not enough. Counsel cited **OKAFOR V LAGOS STATE GOVERNMENT (SUPRA) where the Court held at page 404 at 433 paras G-H, as follows:-**

"The question of infringement of Fundamental rights is largely a question of facts and does not so much depend on the dexterous submission of Counsel on the law. So it is the facts as disclosed by the Affidavit Evidence that is usually examined, analysed, and evaluated to see if the Fundamental Rights have been eviscerated as claimed or otherwise dealt with in a manner that is contrary to the Constitutional and other provisions on the Fundamental Rights of an individual."

Consequently therefore, since the Applicant has failed to show any involvement by the 1st Respondent in this case, or that 2nd and 3rd Respondents have involved the 1st Respondent concerning their transactions, the applicant has therefore failed to prove his case to be entitled to the grant of any of the reliefs sought.

In my view the Applicant merely ran to this Court to be shielded from honouring his contractual obligations to the 2nd and 3rd Respondents and also to seek the Courts protection to prevent law enforcement agencies from carrying out their duties if need be. I so hold.

In this premise I refer to the cases of **I.G. P V UBAH (Supra)** cited by the 2nd and 3rd Respondents in pg 3:14 of their address where the court at page 436, F-G held thus:-

"It is the duty of the Police to investigate Criminal allegations against citizens. The Courts cannot stop the police from performing its statutory functions. If there is evidence of an infringement of any of the Fundamental Rights of a party, the situation can be remedied, but not by stopping police investigation."

"Where there is infringement of the Fundamental Rights of the Applicant, he sues for redress and damages if Applicable. He does not sue to stop investigation of an alleged Criminal offence or to stop prosecution where there are grounds for such prosecution."

I do not think it is fair and just for the Applicant to drag the 2nd and 3rd Respondents to Court when he has approached this Honourable Court with unclean hands. Indeed he who comes to equity must come with clean hands.

In the circumstances therefore and without further ado, I find no merit in this Application, and it is hereby dismissed in its entirety.

₦250,000.00 Naira cost is hereby awarded against the Applicant in favour of the 2nd and 3rd Respondents.

Signed:

***Hon. Justice S. U. Bature
26/5/2022.***