

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
COURT:28**

DATE: 8TH APRIL, 2022

FCT/HC/GWD/CV/85/2021

BETWEEN

MRS. AGNES CHINYERE EZE -----

APPLICANT

AND

**1. NIGERIA POLICE FORCE
2. INSPECTOR GENERAL OF POLICE
3. MR. GABRIEL ADA** }

DEFENDANTS

JUDGMENT

This suit was brought by way of an originating motion filed on 25th August, 2021. The application is supported with a supporting statement, a 16 paragraphs affidavit deposed to by the Applicant herself, and a written address filed by the Applicant's counsel on 25th August 2021. The Applicant is seeking for the following reliefs from this Honourable Court:-

1. **A** Declaration that the detention and compulsory takeover of possession of the Applicant's vehicle, a Sports Utility Vehicle, Toyota High Lander with Chasis Number – JTEDS41A682058961 and Registration number - ABJ284DQ from the 1st day of February 2021 till date by the Respondents through the agents of the 1st Respondent without a warrant or an order of Court is illegal, unlawful and constitutes an infringement of the Applicants fundamental right to immovable property guaranteed under Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Article 14 of the African Charter

on Human and Peoples Rights (Ratification and Enforcement) Act, Cap.10 Laws of the Federation of Nigeria, 1990.

2. An Order compelling and directing the 1st and 2nd Respondents to immediately release the Applicant's Sport Utility Vehicle, Toyota Highlander with Chasis Number – JTEDS41A682058961 and Registration number -ABJ284DQ.
3. General Damages of N20,000,000.00(Twenty Million Naira) against the Respondents for the emotional trauma, harassment, intimidation, embarrassment, loss of possession and use of the Sports Utility Vehicle, Toyota Highlander with Chasis Number – JTEDS41A682058961 and Registration number -ABJ284DQ from the 1st day of February, 2021 till date occasioned by the acts of the Respondents breaching the Applicant's fundamental right to moveable property.
4. An Order of Injunction restraining the Respondent by itself, agents, privies or otherwise, whomsoever from further infringing on any of the Applicant's fundamental rights, particularly her right to movable property over and upon the sports utility vehicle, Toyota High Lander with Chasis Number – JTEDS41A682058961 and Registration number -ABJ284DQ.
5. AND for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

In response to the application, the 1st and 2nd Respondents filed their 8 paragraphs counter affidavit deposed to by one Insp. Ati Jonah and a written address, both dated and filed on 29th October,2021. In reaction, the Applicant filed a further affidavit and a written address in opposition to the 1st and 2nd Respondents Counter Affidavit. The further affidavit and written address is dated 7th December,2021 and filed on 8th December,2021.

The 3rd Respondent also filed a 19 paragraphs affidavit and a written address both dated and filed on 19th January,2022.

I have carefully considered the affidavits and written addresses of all the parties, and the issues canvassed by both the Applicant and the Respondents can be summarized into a sole critical issue for determination by this court to wit: -

"Whether the Respondents has breached the fundamental rights of the applicant to movable property by taking possession of a Sports Utility Vehicle, Toyota High Lander with Chasis Number – JTEDS41A682058961 and Registration number - ABJ284DQ from the Applicant from the 1st day of February 2021 till date without a warrant or an order of Court."

The Applicants action is predicated on Section 44(1) of the 1999 Constitution which provides as follows:-

No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –

(a) Requires the prompt payment of compensation therefore and

(b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

The ground of the applicants action is that the unlawful and unconstitutional detention and compulsory takeover of possession of the Applicant's Sport Utility Vehicle, Toyota Highlander with Chasis Number – JTEDS41A682058961 and Registration number -ABJ284DQ by the agents of the Respondents without a warrant or Order of Court violates the Applicant's right to and interest in the named/described movable property as guaranteed by Section 44 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

Both the Applicant and the Respondents have admitted in their respective depositions that the car was seized by the Police following a complaint by

the 3rd Respondent against one Markson Ajama for Criminal Breach of Trust, Stealing, issuance of dud cheques, obtaining by false pretenses, criminal conversion and cheating. The 2nd Respondent contends that the seized car is an exhibit and that they had concluded investigation into the complaint leading to the seizure of the said car. They went further to attach as exhibit, a letter of legal advice from their legal unit dated 12th July, 2021, wherein they were advised that there is a prima facie case against the 1st Suspect, and that he should be charged. It is surprising why the suspects have not been charged since then.

In paragraph 16 of the 3rd Respondents Counter Affidavit, he averred that the said car was released to him by the end of July, 2021. It is unprofessional of the 1st Respondent to have released a car which they claimed was an exhibit to a person other than the applicant from whom they seized the car without a court order or consent of both parties.

On the procedure for seizure and keeping of properties by the Police, Section 337(1) of the Administration of Criminal Justice Act, 2015, is very clear on what steps the Police should take. It states:-

"The seizure by the police of property taken during arrest or investigation under this Act, or alleged or suspected to have been stolen or found in circumstances which create a suspicion of the commission of an offence, shall, within a period not exceeding 48 hours of the taking of the property or thing, be reported to a court, and the court shall make an order in respect of the disposal of the property or its delivery to the person entitled to its possession or such other orders as it may deem fit in the circumstances."

Also, section 10 (4-6) of the Administration of Criminal Justice Act further states:-

(4) Where any property has been taken under this section from an arrested suspect, a police officer may, upon request by either the

owner of the property or parties having interest in the property, release such property on bond pending the arraignment of the arrested suspect before a court.

(5) Where a police officer refuses to release the property to the owner or any person having interest in the property under subsection (4) of this section, the police officer shall make a report to the court of the fact of the property taken from the arrested suspect and the particulars of the property.

(6) The court to which a report is made under subsection (5) of this section, may, if it is of the opinion that the property or any portion of it can be returned in the interest of justice to the safe custody of the owner or person having interest in the property, direct that the property or any portion of it be returned to the owner or to such person having interest in the property.

The Respondent's in this case did not comply with the law in the handling of the seized Toyota Highlander with Chasis Number – JTEDS41A682058961 and Registration number -ABJ284DQ. They did not apply to the Court for an order to deliver it to the person entitled to its possession, neither did they charge the suspects to court upon the alleged conclusion of their investigation.

The applicant herein has furnished the Respondents with particulars of the vehicle seized which particulars are annexed to this application. The Respondents are still keeping the vehicle since its seizure, and no information is given regarding any steps taken by the 1st Respondent after conclusion of its investigation.

In the circumstance therefore I declare as prayed, that the seizure and confiscation of the applicants Toyota Highlander with Chasis Number – JTEDS41A682058961 and Registration number -ABJ284DQ under the command of the 1st and 2nd Respondent, is a breach of the Fundamental Rights of the Applicant.

The Respondent shall charge the suspects to court within 48 hours from the delivery of this judgment. Failure to do so, I order for the release of the

said vehicle immediately on bond to the Applicant with a further order that the applicant should produce same for purposes of any further investigation by the Police.

I would like to add that the right of man or woman to own properties for whatever lawful purpose he desires is one of those fundamental law of nature that led to the civil rights crusades and the consequential legislation in the first place. This right is at the very foundation of a capitalist and democratic society. It is only under communist and to an extent socialist government that the major tools of production are expropriated by the Government and put to uses that they deem communal under democratic capitalism that Nigeria professes, the right of man to own land and other moveable property is protected strictly by law and recognized as a fundamental right by the constitution. See section 44 of the Constitution the key element of section 44 share of exemptions and qualification contained in section 44(2) is that it protects the individual from arbitrary acquisition of his property. This decision shows that the Court jealously guard the fundamental rights of parties to own properties and any degradation from such a right must be in accordance with a law made for that purpose. See ***A.G BENDEL STATE VS AIDEN (1989) 4 NWLR (PT 118) P.646.*** I therefore in conclusion order that the above directions or order given by the Court shall be strictly adhered to by the 1st and 2nd Respondent ₦100,000.00 is warded as cost against the Respondents.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
8/4/2022

Appearance

Thaddeus Cletus:- For the Applicant
R.N. Maiguru :- For the 2nd and 3rd Defendant.
A.G Ochigbo:- For the 3rd Defendant.

Sign
Judge
8/4/2022