

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: 4th APRIL, 2022

FCT/HC/GWD/CV/126/21

BETWEEN:

OLUSEUN OLUMIDE FADELE ESQ.....

APPLICANT

AND

ECONOMIC AND FINANCIAL CRIMES COMMISSION..... RESPONDENT

JUDGMENT

The Applicant brought this application pursuant to sections 34, 35, & 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Order 2 Rule 1, Order 4 Rules 1,2,3, 4 & 5 of the Fundamental Human Rights Enforcement Rules (2009), Articles 5 & 6 of the African Charter on Human and Peoples Rights (Ratification) and Enforcement Acts and under the inherent jurisdiction of this Honourable Court. The application was dated 27th October, 2021 and filed on 28th October, 2021. The Applicant prays for the following reliefs:-

1. A Declaration that the threat to arrest and detain the Applicant for his role as a legal practitioner in two Garnishee Proceedings with the

following particulars; (i) Suit No: HED/NRJ/M.2/2016 **ENOFE MONDAY VS. ACCESS INVESTMENT NIGERIA LTD (II)** Suit No: HED/NRJ.01/2017 **IMUETIYAN IGHODALO & 1 ORS VS EQUATIN INVESTMENT SOLUTION LTD & 4 ORS** before the Osun State High Court, Ede Judicial division is unreasonable, unlawful and a likely breach of section 35(1) of the Constitution of the Federal Republic of Nigeria as amended and Articles 5 & 6 of the African Charter on Human and Peoples Rights.

2. An Order of Injunction restraining the Respondent whether by themselves, their agents, servants, privies from further inviting the applicant in an attempt to harass, intimidate or unlawfully detain him in respect of his role as a legal practitioner in the garnishee proceedings with the following particulars:-

(i) Suit No: **HED/NRJ/M.2/2016 ENOFE MONDAY VS ACCESS INVESTMENT NIGERIA LTD**

(ii) Suit No: **HED/NRJ.01/2017 IMUETIYAN IGHODALO & 1 OR VS EQUATION INVESTMENT SOLUTION LTD & 4 ORS.**

3. An order of this Court awarding compensation to the Applicant in the sum of ₦10,000,000(Ten Million Naira) against the Respondent for the pain, undue expenses, psychological trauma and risk to life suffered by the Applicant as a result of the Respondent's harassment, needless invitation and continuous threat to arrest the Applicant.

4. An order of this Honourable Court awarding to the Applicant the sum of ₦1,000,000 (One Million Naira) as the cost of this action.

And for such other order or other orders as this Honourable Court may deem fit to make in the circumstances.

In the 5-paragraph affidavit in support of the Applicant's application, deposed to by one Mustapha Lawal, Counsel in the law firm of Greenbridge Partners, the applicant averred that he duly represented his client 'Zenith Bank' in two garnishee proceedings with the following particular: Suit No: HED/NRJ/M.2/2016 ***ENOFE MONDAY VS ACCESS INVESTMENT NIGERIA LTD AND SUIT*** No: ***HED/NRJ.01/2017 IMUETIYAN IGHODALO & 1 OR VS EQUATION INVESTMENT SOLUTION LTD & 4 ORS.*** That at the conclusion of the two proceedings an Order Absolute was made respectively following the affidavits he filed on behalf of his client showing cause that the Respondent had money with his client's bank. The Applicant exhibited his letters of instructions, Affidavits and the Courts orders in his affidavit accordingly. He averred that the judgment debts were paid by his client on the strength of the Orders Absolute that was made by the Courts respectively in the two proceedings.

The Applicant further averred in the affidavit in support of his application, that on 17th October 2017, the Bank and Fraud Unit of the Respondent invited him to their Abuja office, and that on 30th October, 2017 he honoured the invitation of the Respondent, where he was kept from 9am till 3pm before any statement was taken from him, and was subsequently released by 7pm. That he was not told of the Crime against him.

The Applicant averred that he was subsequently invited by the respondent again on two occasions, in December, 2017 and on 17th January 2019, where he was asked to write statements which were in no way different from his previous statement of 30th October, 2017. That the statements he made were in respect to the two Garnishee Proceedings mentioned above.

The applicant deposes that on 7th October, 2021, he received yet another call from one Moses and one Mohammed of the Bank Fraud Unit of the Respondent, asking him to report to the Respondent's office in Abuja, on still the same Garnishee Proceedings mentioned above. The Applicant believes that the repeated invitations of the Respondent has caused him untold psychological pains, trauma, loss of income, embarrassment, and that there is a great threat to his personal liberty because several counsel and bank officials involved in the matter had been invited in the past by the Respondent and released without being subjected to such embarrassment and humiliation.

In his written address, Counsel to the Applicant formulated a sole issue for determination to wit; whether or not this application should be granted. Counsel submitted that the Applicant is being hounded, harassed and invited for pointless periodical report for representing his client Zenith Bank Plc, in a matter which a subsisting order of Court has been made. That all the Applicant did was to obey a valid and subsisting order of the Court as encouraged in ***NWORA V. NWABUEZE (2011) 17 NWLR (PT 1277) page 699.***

Counsel argued that applications for enforcement of fundamental rights are granted once the rights of the applicants are shown to have been breached or threatened; that the Respondent have infringed on the Applicant's right to dignity of person and will further infringe on it if not curbed. He therefore urged the court to grant all the reliefs sought by the Applicant.

In response, the Respondent filed a counter affidavit and a written address dated 15th December, 2021 and filed on the same date. In their 5-paragraph counter affidavit deposed to by one Samson Oloja, a litigation secretary in the office of the Respondent, the Respondent admitted inviting the applicant to its office on 30th October, 2017, but denied detaining the Applicant unlawfully, as the appellant was granted an administrative bail on that very day of 30th October, 2017. That the Respondent was investigating alleged case of criminal conspiracy, criminal breach of trust and obtaining money by false pretense where the applicant is allegedly involved. That it is only carrying out its obligation as an agency of the Government responsible in the investigation of all alleged financial crimes, and that investigations revealed fresh facts which necessitated further information from the Applicant, hence the reason he was asked to come and give additional statement.

In their written address, Counsel to the Respondent raised two issues for determination:-

- i. Whether the Respondent has the Powers to investigate the Applicants Upon reasonable suspicion that the Applicants have committed or are about to commit an offence; whether the powers of the EFCC under sections 36(5) of the Constitution, section 1 and 2 of the Administration of Criminal Justice Act, 2015, section 6, 7, 13, 16 , 21, 24, 28, 29, 34 and 38 of the Economic and Financial Crimes Commission (EFCC) Establishment Act, 2004 and section 6(5)(b) of the Money Laundering Act, 2011 were properly exercised in the circumstances of this case.
- ii. Whether the Applicants have made out a case to be entitled to the reliefs sought?

Counsel argues that going by section 6 and 7 of the Economic and Financial Crimes Commission (EFCC) Act, the respondent is empowered to investigate and prosecute allegations the Applicant as it concerns all cases of economic and financial crimes reported to it for investigation, and possible prosecution where a prima facie case is established. Counsel referred this Honourable Court to section 4 of the Police Act which is impari materia with sections 6,7 and 13 of the EFCC Act, 2004, and the case of ***FAWEHINMI V. IGP (2002) 7NWLR (Pt. 767) 645.***

Counsel relied on the case of ***KALU V. FRN (2014) 1 NWLR (Pt. 1359)pg. 479,*** to further argue that the Respondent is competent to investigate and prosecute the Applicant for money laundering offences.

On second issue, counsel contended that the Applicants have not established the breach of their fundamental right to entitle them to all the

reliefs sought as general damages, and that the rights of the Applicant have not been breached in anyway, neither are his rights under any threat of being breached by the Respondents. He therefore urged the Court to dismiss the Applicant's claims.

I can distill one issue for the determination of this Fundamental Right Application to wit:-

Whether from the totality of the Applicant's affidavit and supporting exhibits, there has been an actual infringement or any threat of infringement of the fundamental rights to liberty and dignity of the applicant, warranting this Court's protection.

To begin with, the Respondents erected their case on the provision of Section 35(1) of the Constitution, as amended: "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty...".

By the provisions of Sections 6, 7, and 13 of the Economic and Financial Crimes Commission (EFCC) Act, the 1st Respondent has the statutory power to investigate arrest, interrogate, search and detain any suspect: ***OBIEGUE VS. A-G FEDERATION (2014) 5NWLR (PT1399) 207. and ONAH vs. OKENWA [2010] 7 NWLR (Pt 1194) 512 at 536.*** This is undoubtedly so. The only qualification, and a very important one at that, is that the power must not be misused or abused. The power must be exercised in accordance with the law. It has to be noted that the right to personal liberty enshrined in Section 35 of the Constitution, which is one of the rights the Appellants sought to enforce is not an absolute right.

By Section 35 (1) (c) of the Constitution, a person can be deprived of his liberty upon reasonable suspicion of his having committed an offence. Where there is such a deprivation of liberty, such a person arrested or detained shall be brought to Court within a reasonable time, within the meaning of Section 35 (5) of the Constitution, that is, one day where there is a Court of competent jurisdiction within a forty-kilometer (40km) radius of the place of detention.

The Applicant has the burden to prove by cogent, convincing and credible evidence, the facts as alleged by him, as construing the breach or infringement of the Fundamental right as guaranteed him by sections 34, 35, & 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

General and wide allegations of such breach or infringement will not suffice.

Apart from the serial invitations, the Affidavit in support of the Applicant's Originating Motion did not disclose any act of breach. In my view, inviting and questioning a person and releasing him to go home does not amount to a breach of his fundamental rights. The Applicant was merely invited, upon receipt of allegations against him, so doing alone in my view cannot constitute sufficient breach or infraction on the fundamental rights of the Applicant.

The facts are lucent that at on the first visit to the Respondent's office, the Applicant was detained for some hours and then released on bail on the same day. On all other days, he was never detained beyond the

constitutional limit. The Constitution is the organic law; it is to be given purposive interpretation: see ***NAFIU RABIU VS. KANO STATE (1981) 2 NCLR 293 at 326, PDP VS. INEC (2001) 1 WRN 1 at 32 - 33 AND DIRECTOR OF SSS VS. AGBAKOB A (2003) 10 WRN 93 at 153 - 154.*** This being so, I am not in any doubt whatsoever that the constitutional requirement was satisfied in this matter since the Applicant was released on bail on self-recognizance after some hours.

Having established that there was no actual violation of the Applicant's fundamental right, I must state that Section 46(1) of the 1999 Constitution has three segments.

The first segment is on the contravention of a person's fundamental right; the second one is on the fundamental right being contravened meaning the contravention is in progress; while the third segment is on the likely contravention of the fundamental right meaning the contravention of the fundamental right is expected or probable.

Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules) also has these three components. The Applicant built his case on the third segment.

That the likely infringement of a fundamental right can be protected before the actual infringement occurs is therefore not in doubt. See in particular ***IGWE V. EZEANOCHIE (2010) 7 NWLR (pt.1192) 61.*** Concerning the third segment (supra) the Court held in the case of ***UZOUKWU AND ORS. V. EZEONU II and Ors. (1991) 6 NWLR (pt.200) 708 at 784*** that –

"... before a Plaintiff or Applicant invokes the third limb, he must be sure that there are enough acts on the part of the Respondent aimed essentially and unequivocally towards the contravention of his rights. A mere speculative conduct on the part of the Respondent without more, cannot ground an action under the third link".

The fundamental right must be in danger of being infringed before an action may be founded on the third limb. See by analogy ***UKEGBU V. NATIONAL BROADCASTING COMMISSION (2007) 14 NWLR (pt.1055) 551***. As stated in the case of ***EZEADUKWA V. PETER MADUKA AND ANOR [1997] 8 NWLR [PT.39] at 661***, mere verbal or oral threat not backed with some overt act of an attempt to infringe the fundamental right of the applicant by the respondent is not enough to sustain the action for threatened breach of fundamental right. There should be evidence showing that the Respondent was determined or unequivocally poised and/or had reached a point of no return to have the respondent's personal liberty restrained.

I find that the repeated invitations issued to the Applicant by the Respondent, constituted a likely erosion of the Applicant's right to personal liberty. I tap from the authority of ***DIAMOND BANK PLC. V. OKPARA (2018) LCN/4626(SC)*** to consolidate the finding. The Respondent have starved this Court of any extenuating circumstances that will compel/propel me to disturb/upset the finding arrived with the aid of the law: Although

the Applicant did not answer/respond to the last invitation, it was potent enough to rattle him, considering the periodical invitations of the Respondent.

There are some inferences to be drawn from the averments of the Applicant. The law grants the Court the license to draw inferences, see ***OKOYE V. KPAJIE (1992) 2 SCNJ 290 REPORTED AS OKONKWO V. KPAJIE (1992) 2 NWLR (PT. 226) 633; BOB V. AKPAN (2010) 17 NWLR (PT. 1223) 421; ADEBAYO V. PDP (2013) 17 NWLR (Pt. 1382)***. The irresistible inference is that the dreadful constant invitations was likely to subject the Applicant to psychological trauma, fear of another round of, discomfiture, inconvenience and denial of his personal liberty: "a commodity of an inherently high value,".

Personal liberty is precious and priceless so that the preservation of liberty of citizens must always be paramount, see ***BENSON V. C.O.P (2016) 12 NWLR (PT. 1527) 445***. Hence, the Courts are enjoined to protect rights to personal liberty and freedom of movement for enjoyment by the citizenry. See ***DSSS V. AGBAKOBA (1999) 3 NWLR (PT. 595) 314; AZUH V. UBN PLC (2014) 11 NWLR (Pt. 1419) 580***. In so far as, the circumstances of the Respondent's invitations amounted to the likely curtailment of the Applicant's inviolable/inalienable rights to personal liberty, the court cannot award any compensation in the absence of proof of loss or injury to Applicant. In ***JIM-JAJA V. C.O.P., RIVERS STATE [2013] 6 NWLR (PT. 1350) 225 at 254***, Muntaka-Coomassie, JSC, opined:

“The appellant's claim is in connection with the breach of his fundamental rights to his liberty by the Respondents. The onus is on him to show that he was unlawfully arrested and detained i.e. that his fundamental right has been violated, if this is proved, by virtue of the provisions of Section 35(6) of the 1999 Constitution Federal Republic of Nigeria, the complainant is entitled to compensation and apology, where no specific amount is claimed. Where a specific amount is claimed, it is for the Court to consider the claim and in its opinion, the amount that would be justified to compensate the victim of the breach. In this respect, the common law principles on the award of damages do not apply to matter brought under the enforcement of the Fundamental Human Rights procedure...”

I have critically looked at paragraph of the entire affidavit in support of the Applicant's application I am of the view that the Applicant have not supplied the material consideration for the Court to grant this application. So also the deposition contained in the Respondents counter affidavit same have not sufficiently provides the necessary material which can conveniently support this position that they are conducting criminal investigation against the Applicant. The Applicants is entitle as a right to be sufficiently informed of the alleged crime suspected to been committed by him. In their counter affidavit apart from the mere assertion of crime

alleged to have been committed by the Applicant there is nothing to support the Respondents position in this trial. It should be noted that special procedure applied in this type of application is basically based on affidavit evidence. In this case from the counter affidavit am not convince at all that the Respondent have put material facts before the Court which would stop the Court from granting this application. However from the affidavit in support of the application the Applicant have deposed that he was invited severally by the authority i.e the Respondent does that amount to infringement of fundamental right of the Applicant? The answer is no. The Respondent have the right to investigate anybody who is alleged to have committed an offence. In this case it was established that the Applicant was only invited by the authority in my view that does not amount to infringement of Fundamental Human Right of the Applicant. The judicial authorities cited above and the case law asserted the right of the respondent to have acted accordingly. Having carefully considered the respective submission of the learned Counsel on both sides on the issue I am of the view that the proper approach is to examine the reliefs sought by the Respondent as Applicant before the trial Court as party seeking to enforce his fundamental right, the grounds for seeking the reliefs and the facts relied upon to support the reliefs being sought. If the reliefs sought, the grounds upon which the reliefs were sought together with the facts relied upon in support of such reliefs, have disclosed the breach of fundamental right is the main plank upon which the reliefs are being sought, then redress may be sought by the Fundamental Right Enforcement Procedure Rules 1979.

However, where the alleged breach of Fundamental Right is incidental or ancillary to the main complaint it is incompetent to proceed under the rules see ***EGBUONU VS BRONO RADIO TELEVISION CORPORATION (1977) 12 NWLR (pt531) 21 TUKW VS GOVT OF TARABA STATE (1977) 6 NWLR (pt510) 549 and see TRUCKS NIG LTD VS ANIGBORO (2001) 2 NWLR (pt696) 159.*** From the above judicial authorities the application filed by the Applicant falls short within the requirement of the Fundamental Right Enforcement Procedure Rules. However this Court based on the application filed by the Applicant the Court is enjoined to make any further order as this Court may deem fit to make. I therefore ordered that the Respondent shall immediately as a matter of urgency conclude their investigation on or before the 31st April, 2022 and the Applicant if need be, may be arraigned before a Court of competent jurisdiction within the said period. On no account the Applicant's Fundamental Right be infringed whatsoever. Consequently the application made by the Applicant is hereby refused including the reliefs sought also no order as to cost of damages or any other cost is been made by the Court.

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

Appearance

K.O Balogun:- Appearing with is Oluwasheyi Adebayo Azeez for the

Applicant.

Sign
Judge
4/4/2022