

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 12th APRIL, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: CV/2044/2021

BETWEEN:

MR. FARES CHAWICH-----APPLICANT

AND

- | | | |
|--|---|-------------------------|
| 1. MR. BARAKAT ABUHALAWA | } | -----RESPONDENTS |
| 2. NIGERIAN POLICE FORCE | | |
| 3. ECONOMIC AND FINANCIAL
CRIMES COMMISSION | | |

JUDGMENT

The applicant was brought this application pursuant to Order 2 Rule 1 & 4, Order 6 Rule 1 of the Fundamental Rights Enforcement procedure Rules, Cap 62 Laws of the Federation 1990 Article 6 & 7 (B) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Acts Cap 10 Laws of the Federal republic of Nigeria 1999 as Amended. It is dated the 19th day of August, 2021, filed on the same date.

The applicant is praying for the following reliefs:

- A. *A Declaration that the arrest by second respondent and further threat of the arrest of the applicant by the second and third respondents at the instigation of the first respondent based on the business transaction is unconstitutional, wrongful and above all an infringement on his right to freedom of movement.*
- B. *A Declaration that the business transaction which led to the arrest and or further threat of arrest of the applicant with a bid to forcefully make the applicant pay the sum of monies alleged by the First Respondent is a Civil matter, which only a civil court can determine each party's obligations and not a criminal case of issuance of dud cheques, which the second and Third respondents can be allowed to intervene in.*
- C. *A Declaration that the arrests and further threat to arrest or possible arrest and detention of the applicant by the second and third respondents or anybody acting as the agent or at the instigation of the first respondent based on a commercial transaction that is devoid of any criminal or fraudulent coloration or intent is unconstitutional, unlawful, utral-vires the scope of police duty.*

- D. An Order of perpetual injunction, restraining the respondents, their agents, servants or privies from harassing intimidating, threatening the arrest and detain or humiliate the Applicant on the issue and facts arising from the matter set out in the statement of facts herein.*
- E. The sum of N50,000,000(Fifty Million Naira) being damages against the first respondent for the illegal and unconstitutional violation of the applicant's right.*
- F. The sum of N10,000,000.00 (Ten Million Naira) being damages against the second respondent for illegal and unconstitution violation of the applicants rights.*
- G. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstance.*

Attached to the applicant is a statement pursuant to Order 11 Rules 3 of the Fundamental Human Rights (Enforcement Rules)2009 41 paragraphs affidavit in support deposed to by Ngozi Ugwu a litigation secretary in the law firm of the applicant's counsel. In further support of the application is a written submission in support of application for Enforcement of his Fundamental Rights. Also in support are documents marked as Exhibit A1, A2, A3, A4 and A5.

FACT OF THE CASE

The applicant is the Chairman/Chief Executive of my Mechanic Limited, a car dealer at No. 6 Adeola Adeku Street Lagos as well as a mechanic workshop at Mabuchi, District, Abuja.

The first respondent is the Chairman /Chief Executive officer of Abuhalawa Int'l Limited and 2c Stone Nigeria Limited, a car dealer at Plot No. 893 Jahi District Gwarimpa, Abuja. Also has an office at No. 28 F.O. Williams Street, Life Camp, Abuja.

The applicant and the 1st defendant entered into a sales and purchase agreement dated the 17th of February, 2019 for Sale of Range Rover "**Autobiography**" (Suv)2017 Model with chasis **No. SALG A2EF4G243649** at the purchase price of N50,000,000.00. And a **Ferrari 458, 2013 model with chasis No. 2FF 68 NHA9DO195200** at the purchase price of **N100,000,000.(One Hundred million)** Totaling the sum of **N150,000,000.00). (One Hundred and fifty Million Naira only).**

It was further agreed that the applicant shall make advance payment of the sun of N50,000,000.00 of the total agreed sum through a swap deal by handling over the following vehicles with their complete vehicle paper as well as customs papers to the first respondent; a **Range Rover Sports(SUV)with Chasis No.**

ALWRV21FXEA352519, 2015 mode – priced at N25,000,000.00 (Twenty Five Million naira only).

Lexus GX460 (SUV) 2013 Model with Chassis No. **JT, BM7FX4 E5066780**, priced at N15,000,000.00 (Fifteen Million Naira only) and a Mercedes Benz C Class 300, 2015 Model with Chassis No. 55SWF 4KB9FU051245, priced at N10,000,000.00 (Ten Million Naira) in all, totaling the sum of N50,000,000.00 (Fifty Million Naira) being the agreed advance payment of N50,000,000.00. The applicant issue four 4 Zenith Bank Cheques – post Dated in the sum of N100,000,000.00 (One Hundred Million naira only) for the two vehicles.

The first Respondent during the substance of the first agreement dated 17th of February, 2019 request the applicant to procure a Mercedes Benz McLaren 2011 Model on the promise that he has a high end customer who is in urgent need of the car. The applicant secured a Mercedes mclaren 2011 model with Chasis No. WDDAK76f4 9001960 at a purchase price of & 800,000.00 (Eight Hundred Thousand United State of American Dollars) at about N420,000,000 (Four Hundred and Twenty Million naira only). As at the time of the transaction. The applicant and the first respondent agreed that the sum of N100,000,000 be

deducted as the outstanding indebtedness by the applicant as per their agreement of 17th February, 2019. From the purchase price of the Mercedes Benz McLaren's transaction. The applicant avers that the 1st respondent travelled to Dubai as of the time he negotiated for the purchase of the Mercedes Benz McLaren 2011 model and the customs paper were sent to him by electronic medium. That the applicant had paid all the monies due to the 1st respondent as per the agreement dated 17th February, 2019. The 1st respondent failed and neglected to hand over the vehicle particulars and the customs papers as well as the spare key of the Range Rover "Autobiograph" (SUV) as envisage in paragraph 3.1 of the agreement. That the 1st respondent refusal or failure to hand over the vehicle particulars and customs paper has caused him tremendous damage to the applicant as its difficult if not impossible to sell the Range Rover Autobiograph, due to the 1st respondent refusal to hand over the vehicle documents and spare key. Applicant avers that the 1st respondent on his return to Nigeria, he connived with some staff of Nigeria Customs Service and or fraudulently deceived Nigeria Customs Service to obtained approval from the Nigeria Customs Service to fraudulently Export the applicant's Mercedes Benz McLaren without his authorization to Dubai. That the 1st respondent wrote

a false petition to the 2nd respondent and falsely alleged that the applicant stole his Range Rover “Autobiograph”.

The applicant was arrested by men of the Nigeria Police Force stationed with the Inspector General of Police Monitoring Team at Abuja where he was detained for three days and treated like a common criminal and was only admitted to bail pursuant to his Solicitor letter to the police. That the applicant was arrested again in July, 2021 at the instigation of the 1st Respondent on wrongful assumption of issuance of dud cheques to the first respondent.

Learned counsel in his written address formulated two issues for determination of this Honourable Court to wit:

- 1. Whether the first respondent’s act of threatening to use, hired thugs or contrive a false petition which “She” Intended to file if not filed with the Nigeria police do not constitute a violation of the Fundamental Rights of the applicant to warrant the grant of the reliefs being sought by the applicant.*

On this issue, learned counsel to the applicant herein relying on section 46 (1) of the constitution of Federal Republic of Nigeria 1999 (as Amended). And the case of **MBADIKE & ORS V. LAGOS INTERNATIONAL TRADE FAIR MANAGEMENT**

BOARD & ORS 2017LPELR-41968 C.A. To the effect that the accruing of cause of action in enforcement of fundamental Rights presents an interesting scenario, being that an applicant in a fundamental rights action need not wait until when the rights conferred upon him by law has been violated before approaching the court for the enforcement of the rights. Learned counsel submitted in the nut shell that the Respondent know very well that the transactions between the parties is devoid of any criminal intention, it was a purely commercial transaction. That the respondent threats to use hired thugs to get the applicant to refund or source for their seed capital and to do a false petition to the Inspector General of Police that the applicant defrauded him by obtaining the sum invested under false pretence and thereby converted his money would constitute an infringement of his fundamental right if not duly checked by the Honourable court .

He relied on the case of **FAJEMIROKUN V. COMMERCIAL BANK NIG. LTD & ANOR (2009)2-3-SC (PT.7).**

He contends that the threat by the first respondent to use, hired thugs is a violation which the court cannot allow to occur as the applicant's right to life may not be adequately protected if the court should wait for it to take place which this court will not

allow to happen as death may likely occur. That the police and hired thugs are not recovery agents and the matter at hand bothers on commercial transactions.

ISSUE NO. 2

On this issue, learned counsel to the applicant herein said that any trespass to person however slight, gives right of action to recover at least nominal damages.

That even where there has been no physical damages, substantial damages are given to vindicate the plaintiff's rights even though he has not suffered any pecuniary damages. He referred to the cases of **OKNKWO V. OGBOGU (1996)37 NWLR 580 and ISENALUMHE V JOCE AMADIN (2001)1 CHR at 460.**

On the other hand, learned counsel to the Defendant/respondent in his written address on points of law in support of counter affidavit opposing the application of the applicant submits a sole issue for determination as follows:

Whether, from the fact of this case a prima facie criminal allegation worthy of investigation by the Nigerian Police has been established to defeat the application for the

enforcement of the fundamental human rights of the applicant either in part or in whole.

The learned counsel to the respondents submits in the main that there is a prima face crime worthy of investigation by the Nigeria Police force against the applicant. He further submits that it is not in all cases that an applicant rushes to court to file for the enforcement of his Fundamental human rights that the court will stop the police or any other law enforcement agency from carrying out investigation. He submits further that the Nigeria Police Force have a duty under the Act and the Constitution of the Federal republic of Nigeria to prevent and Investigate Crime in Nigeria. Learned counsel argued that the present position of the law is that civil and criminal action based on same set of facts can both be instituted and could go on simultaneously as held in the case of SMITH V. SELWYN. He recommend the case of **F.R.N. V. LALWANI (2013) LPELR – 20376 (CA)**. Also **VERTAS INSURANCE CO LTD V. CITIRUST INEST. LTD (1993)3 NWLR (PT. 281)349 AT 364 - 365**.

On a final note, learned counsel contended that courts are not to be used as an avenue for gagging and the court should resist any attempt by any citizen to use them as such. He relied on the

case of **A-G ANAMBRA STATE V. UBA (2005) 15 NWLR (PT. 947)44.**

I have read very carefully the application and the affidavit filed in support of the originating motion I have equally considered the written addresses filed by the applicant and the respondents herein and all the exhibits attached, having done that, it is my firm legal opinion that the instant suit rises a lone issue for determination to wit:

Whether from the circumstances and facts before me, the respondents have infringed on the fundamental rights of the applicant.

The Supreme Courts in the case of **RANSOME KUTI V. A.G. OF THE FEDERATION (1985)2 NWLR (PT. 6)211 PER ESO J.S.C.** defined Fundamental Right thus:

“It is a right which stand above ordinary laws of the land and which is in fact antecedent to the political society itself”.

It is a primary condition to civilized existence and what has been done by our constitution is to have these rights enshrined in the constitution so that the right could be immutable”.

It is a settled principle of law that a person may invoke the Fundamental Right Enforcement Rules under instances as provided under section 46(1) of the Constitution of the Federal republic of Nigeria 1999 (As amended). See the case of **GOVERNOR OF BORNO STAT V. GADANGARI (2016)1 NWLR (PT.1493)396**. Where the court held thus:

“There are 3)three(instances under section 4(1) of the constitution of the Federal republic of Nigeria 1999(as Amended)where any person may invoke the Fundamental Right Enforcement Rules to seek redress in a court of law, namely; when it is alleged that any of the provision of Chapter IV has been or is being or likely to be contravened; it is alleged that any provision of chapter IV is being contravened; the third instance is where the fundamental Right is likely to be contravened”.

It is therefore imperative to state that in a case of Enforcement of Fundamental Human Rights as enshrined in Chapter IV is being or has been or likely to be contravened.

The law is settled that the Nigeria Police and its operatives whether at the Federal, State, Zonal, Command are empowered by the police Act and the constitution to investigate crimes or perceived danger, which has been reported to them. In the

performance of their duties, the police can investigate crimes or perceived danger, which has been reported to them, in the performance of their duties. The police can investigate, invite, arrest, charge and prosecute any person who they believe has committed an offence but such must be done judiciously and preserving the fundamental Human Rights of citizens and not to be seen as infringing on the right of citizens as enshrined in chapter IV of the constitution of the Federal Republic of Nigeria, 1999(as Amended).

The applicant herein in his affidavit in support of this application, also in his written address argued vehemently in the main that transaction between the applicant and the respondent is purely a civil transaction. That the 1st respondent instigates the use of the 2nd and 3rd respondent as a debt recovery agent knowing fully well that the transaction between them is purely civil. The applicant in paragraph 15 of his further affidavit avers that the cheques attached as exhibits by the 1st respondent and marked as exhibits Barakat 3, 4, 5 and 6 were never marked as dishonoured.

It is trite law that issuance of a dud cheque is a criminal offence by virtue of the dishonoured cheques (offences) Act 2004 see the cases of **FAJEMIROKUN V COMMERCIAL BANK NIGERIA LTD(2009) LPELR-1231(SC) ABRAHAM V FRN (2018) LPELR-44136**

A careful perusal of exhibits Bararkat 3, 4, 5 and 6 show that the exhibits i.e. cheques when presented at the bank and the inscription "stop cheque" was written on them. The cheques were returned unpaid. In my considered legal opinion, the issuance of cheque by the applicant to the respondent which was returned unpaid by the Bank to the respondent constitutes an act which could be investigated by the police. As I have said earlier in this judgment the Nigeria Police by virtue of the Constitution of the Federal Republic of Nigeria 1999(as Amended) and section 4 of the police act, the police are empowered to investigate crime reported to them. It is the position of the law that invitation extended to an individual by law enforcement agencies for the purposes of investigation of crime can not constitute infringement of fundamental human rights. See the case of **SHEMA V. FRN (2019) ALL FWLR (PT. 976)929.**

Accordingly, it is hereby adjudged that this application by the applicant for the enforcement of his fundamental human right dated 19th August, 2021 filed on the same date having found to be unmeritorious is hereby struck out, cost of N50,000.00 is awarded against the applicant in favour of the respondents.

Appearances:

Parties absent

Friday O. Abu for the 1st Respondent.

No. appearance for the applicant.

Judgment read in open court.

Signed
Presiding Hon Judge
12/04/2022