

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI**

**THIS 26<sup>TH</sup> APRIL, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA**

**SUIT NO: CV/1704/2021**

**BETWEEN:**

**OSITADIMMA ENYA      -      -      -      -      APPLICANT**

**AND**

**1. INSPECTOR GENERAL OF POLICE**  
**2. COMMISSIONER OF POLICE**  
**FCT POLICE COMMAND**      }      **RESPONDENTS**

**JUDGMENT**

This is a matter commenced by an originating motion dated and filed on 22<sup>nd</sup> July 2021. The application is brought pursuant to rules 1 and 2 of the fundamental right’s (enforcement procedure) rules, 2009, sections 46, 34, 35 and 41 (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 peoples’ rights

The applicant herein is praying this Honourable court for the following reliefs:

- i. A Declaration that the detention of the Applicant at the Respondents' Cell from the 22<sup>nd</sup> day of March, 2020 till the 17<sup>th</sup> of December, 2020 when a remand order was obtained, at the instance of Respondents was unlawful, illegal, unconstitutional and amounts to a violation of the Applicant's fundamental rights to dignity, liberty and movement.*
- ii. A Declaration that the prolonged and continued detention of the Applicant beyond the return date of the Remand Order (i.e. 7<sup>th</sup> day of March, 2021) at the Nigerian Correctional Service Centre, Suleja, Niger State without arraignment and trial before a court of competent jurisdiction over an unproved allegation of crime is unlawful, illegal, unconstitutional and amounts to a violation of the applicant's fundamental rights to dignity, liberty and movement.*
- iii. A Declaration that the prolonged and continued detention of the Applicant since the 22<sup>nd</sup> day of March, 2020 till date, at the instance of the Respondents at the Nigerian Corrections Service Centre in Suleja, Niger State without arraignment and trial before a court of competent jurisdiction and a valid order of court over an unproved allegation of crime is unlawful, illegal, unconstitutional and amounts to a violation of the applicant's fundamental rights to dignity, liberty and movement.*
- iv. An Order of this Honourable Court releasing the Applicant on conditions that will ensure his availability to stand for his trial in the event that the Respondents decide to file any criminal*

*charge against him on the alleged crime for which he is being unlawfully detained.*

- v. *An Order of this Honourable Court for an injunction restraining the respondents either by themselves, agents, servants or privies from re-arresting, detaining or in any way jeopardizing, constraining, or respect of the same alleged offence for which he is currently being unlawfully and unconstitutionally detained without trial or any valid court order except for his immediate arraignment and trial by an appropriate court of competent jurisdiction for the alleged offence.*
  
- vi. *The sum of NGN 5,000,000.00 (Five Million Naira) as general damages.*

***The grounds upon which the reliefs are sought:***

1. *The applicant was arrested on March 22, 2020 at Dantata Quarters Dei-Dei and taken to the Nigeria Police Force outpost Jabi at Jabi (Anti-One Chance Unit), Federal capital territory on the allegation of the offence of Robbery and Murder.*
  
2. *The applicant spent over five days in detention at Nigeria Police Force Outpost Jabi (Ant-One Chance Unit) where he was severely tortured (hanged in a tree, with chains and flogged with dangerous torturing objects). The scars from the torture are still very much visible on the Applicant's body.*

3. *Thereafter the Applicant was transferred to SARS office, Apo where the Applicant suffered untold ordeals, both physically, emotionally psychologically and otherwise.*
4. *after some days at the SARS office Apo, he was taken to the FCT Police Command, Criminal Investigation Department, where he was paraded alongside many other persons as a notorious gang of criminals.*
5. *All through this time of excruciating ordeal, the Applicant was not allowed to call or inform his relatives about his whereabouts.*
6. *It was after the Applicant was paraded as a notorious criminal at the State CID office that his relative got wind of his whereabouts through the media.*
7. *after the parade and interview at the state CID office, the Applicant was taken back to SARS office, Apo where he was tortured. The Applicant spent over nine months without trial.*
8. *the Police at SARS, Apo collected over N100, 000.00 (One Hundred Thousand Naira) from the Applicant's relative to secure his release, but he was never granted bail.*
9. *The Applicant was in detention at the Respondents' cell from the March 22, 2020 when he was arrested till 17<sup>th</sup> December, 2020 when a Remand Order was obtained from a Chief Magistrate Court, Wuse Zone II presided over by Idayot A Akanni, and a return date was fixed for 7<sup>th</sup> January, 2021.*
10. *Following the order of the Chief Magistrate's Court, the Respondents bundled the Applicant and dumped him at the*

*Nigerian Corrections Service Centre Suleja to rot in jail without any formal charge to court.*

- 11. The Respondents have not arraigned the Applicant before any court of competent jurisdiction since the Remand Order was obtained and the Applicant has been in detention since the return date of the Remand Order (i.e. 7<sup>th</sup> January, 2021)till date.*
- 12. The Applicant has not been arraigned before any competent court and his pleas have not been taking in any court of law.*
- 13. This prolonged and continued detention of the Applicant by the Respondents without any formal charge and trial in a court of competent jurisdiction is unlawful, illegal, unconstitutional and amounts to violate of the Applicants' fundamental rights to dignity liberty and freedom of movement.*

Attached to the originating motion is a 9 paragraph affidavit deposed to by ISHAKA YAKUBU a litigation clerk in the law firm of the counsel to the applicant.

The applicant avers that he has been in the custody of the respondent since the date of his arrest on March 22<sup>nd</sup> 2020, at his residence in Dantata Quarters, Deidei and detained at the Nigeria Police Force outpost Jabi on the allegation of the offence of Robbery and Murder for five days, where he was severely tortured, and there after transferred to SARS office Apo where he suffered untold ordeals, physically emotionally psychologically and otherwise. That after some days, he was taken to the FCT Police Command Crime Investigation department where he was paraded alongside other persons as a notorious gang member and that his family became aware of his

whereabouts on social media after being paraded as a notorious criminal. That after his interview at the state CID he was taken back to SARS office Apo where he spent 9 months in torture without trial. The police at the SARS office Apo collected over N100,000 from the applicants relative to secure his release but to no avail. That a remand order was obtained from a Chief Magistrate court presided over by Idayat O. Akami and a return date was fixed for 7<sup>th</sup> January 2021; the Applicant was not arraigned before any court of competent jurisdiction since the remand order was obtained till date.

Learned counsel to the applicant in his written address in support of the motion on notice in support of enforcement of the fundamental human right formulated two issues for determination:

- 1. Whether the detention of the Applicant at the respondents' cell from the 22<sup>nd</sup> day of March 2020 to 17<sup>th</sup> December 2020 when a remand order was obtained by the respondents against the applicant is not in violation of the respondent's fundamental rights to dignity of human person, liberty and freedom of movement as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as Amended).*
- 2. Whether the continued detention of the Applicant by the Respondents without arraignment and trial beyond the return date contained in the remand order is not in violation of the applicant's fundamental rights to dignity of human person, liberty and freedom of movement as*

*guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as Amended).*

On issue number one above, it is the argument of counsel that the right to personal liberty of persons are enshrined in Section 35 of the 1999 Constitution as Amended. Counsel submitted that the applicant was arrested based on suspicion that he committed a criminal offence. It is the submission of counsel however the continued detention of person without bringing before a court of competent jurisdiction is prohibited by the constitution. Counsel made particular reference to Section 35(4) and (5) of the 1999 constitution as Amended.

Counsel submitted that the Applicant has been detained for well over 2 days from the affidavit in support of this application, that the applicant was rearrested on 22<sup>nd</sup> day of March 2020 and was in detention till the 17<sup>th</sup> December 2020.

Counsel relied on the case of **Alhaji Tukur Danfulani Vs Economic & Financial Crimes Commission & 2 Ors. (2016) 1 NWLR (Pt. 1493)223** At 217, to the effect that continued detention of persons without an order of court is an infringement of right to liberty. Counsel submitted further that there is no legal or constitutions for the prolonged, continued and unending detention of the applicant by the respondent without arraignment. It is the contention of counsel

that there is no Criminal Charge against the Applicant in any court of competent jurisdiction and as such the applicant cannot be denied the benefit of the doubt. Counsel cited the case of **Ikumonihan V State (2014)2 NWLR (pt. 1392)564 at 589** to the effect that presumption of innocence is guaranteed by Section 35(1)(4)(5)(6) of the 1999 Constitution as Amended.

It is the submission of counsel that where the law prescribe a laid down mode, method or procedure for doing an act or things only such mode or method prescribed can be adopted otherwise such an act will be ultra vires, he cited **Ameachi V. INEC (2008)5 NWLR (PT. 1080)227 AT 318**. Counsel referred this Honourable court to the case of **Inspector General of Police & 2 others Vs. Peter O. Ikpila & another (2016)9 NWLR (Pt. 1519)23** to the effect that the court must intervene when a law enforcement agency or body like the police exceed the bound of its mandate.

Counsel argued that no charge was filed against the applicant and his plea was not taken in any court of competent jurisdiction until he was remanded by magistrate court on the 17<sup>th</sup> December 2020.

On issue number two, counsel referred this Honourable court to the provisions of Section 296 (1) and (2) of the Administration of Criminal Justice Act 2015, which stipulates that:



- 1. Where an order of remand of the suspect is made pursuant to Section 293 of this Act, the Act, the order shall be for a period not exceeding 14 days in the Arrest instance, and the case shall be returnable within the same period.*
- 2. Where, on application in writing, good cause is shown why there should be an extension of the remand period, the court may make an order for further remand of the suspect for a period not exceeding 14 days and make the proceedings returnable within the same period.*

Counsel submitted that the respondents have failed, neglected and refused to arraign the applicant before a court of competent jurisdiction, therefore leaving the applicant to remain in detention in perpetually.

On the whole, it is the submission of counsel that the continuous detention of the Applicant beyond the return date of the remand order in the absence of any order of court extending the remand of the applicant does not fall under any of the exceptions created by section 35(1) of the 1999 Constitution (As Amended) and is therefore illegal, unlawful and continues and abuse of the provisions of the 1999 constitution as Amended as well as section 296(1) and (2) of the Administration of Criminal Justice Act 2015.

In response, the respondent file a 14 paragraph counter affidavit dated and filed on the 10<sup>th</sup> day of November 2021, deposed to by Adesina Sunday a litigation Secretary in the law firm of the respondents counsel.

The Respondents avers that according to investigative report, the applicant is the 8<sup>th</sup> suspect, and that he admitted that he is into one chance robbery and specializes in robbing female victims along Lugbe and Kubwa express way Abuja and sell the loots to one Alhaji at Suleja, the applicant and 7 others were arraigned in charge No. CR/1112/2020 before the FCT High court only for the judge to be elevated during hearing, and all efforts to get the case reassigned proved abortive till date. Annexed to the counter affidavit of the respondents are Exhibit 'A' which is a charge sheet and Exhibit 'B' which is a request of reassignment dated 11 August, 2021.

Learned Counsel to the respondents in his written address formulated a lone issue for determination, whether in the circumstance the applicant is entitled to the relief sought.

On the lone issue above, learned counsel submitted while citing section 35 and 36 of the 1999 constitution as amended and the administration of criminal justice act that the respondent has complied with the provisions stated above without any form of bias.

In response to the respondents counter affidavit the applicant filed a 6 paragraph further affidavit dated and filed on the 16<sup>th</sup> November 2021, deposed to by Stanley Ornguze a litigation officer in the law firm of the applicants counsel.

The applicant counsel submitted that paragraphs 2, 3 and 4 of the respondents affidavit are false, misleading and are intended to deceive this honourable court; that contrary to paragraph 7 of the

respondents counter affidavit the applicant has spent 223 days in the respondents custody before a remand order was obtained and that the applicant was not arraigned before a court of competent jurisdiction within a reasonable time.

Learned counsel avers that the respondent delayed the applicant incarceration indefinitely, that contrary to paragraph 10 of the respondents counter affidavit, the request of reassignment was made and dated 19 August 2021, while that of the charge sheet was dated 23<sup>rd</sup> December 2020 and filed 8<sup>th</sup> January 2021, which took the respondent 262 days before requesting a reassignment.

Learned counsel further submitted that the Chief Justice of Nigeria passed a circular as early as May 4<sup>th</sup> 2021 to all heads of court in the Federal and State Judiciaries to hear urgent matters and hold virtual sittings.

I have read very carefully the Enforcement of Fundamental Human Right as filed by the Applicant herein. I have also perused the affidavit annexed, the exhibits, further affidavit and written address of the learned counsel to the applicant herein. In the same vein, I have read very carefully the counter affidavit together with the exhibits attached of the learned counsel to the respondent herein. It is my considered legal opinion that this application raises a lone issue for determination to wit:

**A. Whether in the circumstance of this application, the applicant herein is entitled to the grant of the reliefs sought before this Honourable court.**

The supreme court in the case of **RANSOME KUTI VS A.G. OF THE FEDERATION (1985)2 NWLR (PT.6)211 PER ESO J.S.C.** defines Fundamental Right thus:

*"It is a right which stands above the ordinary laws of the land and which is in fact antecedent to the political society itself. It is a primary condition to a 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 trite that a person may invoked the Fundamental Right Enforcement Rules under 3 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 BORONU STATE V. GADAMARI(2016) I NWLR (PT. 1493)396. Where the court held as follows:

*"There are three (3) instances under section 46)1(of the constitution of the Federal Republic of Nigeria 1999(as Amended) when any person may invoke the Fundamental Enforcement Rules to seek redress in a court of law, namely; it is alleged that any of the provision of chapter iv has been or is being or is being likely to be contravened. The second instance is where it is alleged that any of the provisions of Chapter IV is being contravened and the third instance is where the Fundamental is likely to be contravened".*

It is therefore pertinent to say that in the case of Enforcement of Fundamental Human Rights as in this case, the onus is on the applicant to show that his Fundamental Human Right as enshrined in chapter iv of the 1999 constitution is being, or has been or is likely to be contravened. See the case of **FAJEMIROKUN V. COMMERCIAL BANK (credit) (LYONNAIS NIG. LTD (2009) PT. 1135 PAGE 588 AT 611 PARA A-C** PER I.T. Muhammed JSC.

In the interpretation of the Constitution, the courts must give a broad or liberal construction to those provisions designed to safeguard Fundamental Human Rights. Once a citizen has shown that any of his Fundamental Human Rights has been infringed, the burden is on the infringing body to establish that the denial of those rights were justified by law. See the case of **DIRECTOR SSS V. AGBAKOBA (1999)3 NWLR PT 595 page 314 at 357 para F – A at 371 para A – E.**

As averred in the affidavit in support of this application deposed to by one ISIAKA YAKUBU, a litigation clerk in the law firm of the applicant's counsel, that all facts contained in the statement and affidavit were gotten from the applicant by his counsel one Odinakachukwu Okeke Esq. at the correctional Service Centre, Suleja on 25<sup>th</sup> March, 2021 at about 12:05pm. He stated in paras B, of affidavit in support in the main that, the respondent was arrested on March 22, 2022 at Dantata Quarters, Dei-Dei on the allegation of Robbery and Murder, the applicant was at the Respondent's cell from 22, March 2020 till December 2020 when a remand order was obtained from a Chief Magistrate court, wuse zone II. Same was marked as Exhibit A. That the respondent dumped the applicant at corrections Service Centre, Suleja, to rot in jail without any formal charge to court. The applicant in paragraph 4 of his affidavit avers that the respondents have not arraigned the applicant before any court of competent jurisdiction since the Remand order was obtained and the applicant has since been in detention since return date of the remand order till date.

The respondent counsel in paragraph seven (7) of their counter affidavit avers that the applicant and (7) seven others were arraigned in Charge No. CR/1112/2020 before the FCT High court only for the Honourable judge to be elevated during the hearing of this case. That all efforts to get the case reassigned to another judge has proved abortive. Learned counsel attached Exhibit A, which is the charge

with charge No. CR/1112/2020. Exhibit B, which is the letter of request for Re-assignment to another court.

The Fundamental Right the applicant seeks to enforce is the Right to personal liberty guaranteed by section 35 (1) Of the constitution, which states *"Every person shall be entitled to his liberty and no person shall be deprive of such liberty same in the following cases and in accordance with the procedure permitted by law"*.

*Section 35(1)(c) of the 1999 Constitution (as Amended) mention instances where right to personal liberty of an individual can be deprived which is for the purpose of bringing him before a court in execution of the order of a court upon reasonable suspicion that he has committed a criminal offence.*

Section 35(1) B says:

*"Every person shall be entitled to his liberty and no person shall be deprived of such liberty save in the following cases and in accordance with the procedure permitted by law"*.

*B. By reason of failure to comply with order of a court or in order to secure the fulfillment of any obligation imposed upon him by law.*

It is my considered legal opinion that in the absence of a cogent and compelling evidence before me to controvert or impeach exhibits A and B attached to the respondents counter affidavit, I find that the applicant has been charged to High court of FCT holden at Abuja; and this applicant as presently constituted is outside the purview of Fundamental Human Right application, I so hold.

Consequently, originating motion dated 23<sup>rd</sup> July, 2021 is lacking in merit, it is hereby struck out.

**Appearances :**

Parties absent

B.O Akinseye George (for the defendant/respondent) Applicant

Judgment read in the open court

for the respondents

**Signed**  
**Presiding Hon Judge**  
**27/04/2022**