

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON MONDAY THE 12TH DAY OF SEPTEMBER, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/2019/2021

BETWEEN:

CHRISTOPHER OKEKE

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APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE

2. KENNETH ODOGWU

3. CONRAD EMEKA ODOGWU

4. ACCESS BANK PLC

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RESPONDENTS

JUDGMENT

Christopher Okeke instituted this action against the Inspector General of Police, Kenneth Odogwu, Conrad Emeka Odogwu and Access Bank PLC seeking the enforcement of his Fundamental Right. He claims the following Reliefs:

- a. A Declaration that the invitation, intimidation arrest and detention at FIB, FCIID Area 10 Garki, Abuja like**

a common criminal on 8th July, 2021 in respect of civil issue of gift of a landed property which was given to him by 2nd & 3rd Respondents' father, Late Chief Sunny Odogwu for diligent service of over 25 years which is purely civil in nature is unconstitutional, illegal, unlawful and a clear violation of his Fundamental Right.

- b. A Declaration that the intimidation, harassment and threat to the Applicant's person by the Respondents through its agents, over civil issue are unconstitutional, illegal, unlawful and a clear violation of the Applicant's Fundamental Human Right.**
- c. A Declaration that the incessant invitation of the Applicant by the 1st Respondent over civil issue is unconstitutional, unlawful, illegal, null and void.**
- d. A Declaration that the seizure of the Applicant's land documents by the 1st Respondent without a just cause is unconstitutional, unlawful, illegal, null and void.**
- e. An Order of Perpetual Injunction restraining the Respondents jointly and severally by themselves and/or their agents, privies, servants, howsoever called from any further unlawful harassment, invitation, intimidation, arrest of the Applicant in relation to civil issue.**

- f. An Order of Perpetual Injunction restraining the 2rd and 3rd Respondents jointly and severally by themselves and/or their agents, privies, servants, howsoever called from further making fictitious and/or false report to the 1st Respondent or any other law enforcement agency with the view to wrongfully settle the law in motion against the Applicant in relation to civil issue of gift by the late father which the Applicant legally received before the demise of their father.**
- g. An Order releasing the Applicant's land documents unlawfully seized by the 1st Respondent without a just cause immediately.**
- h. An Order restraining the 4th Respondent from purchasing the property from the 2nd & 3rd Respondents.**
- i. A public apology from the Respondents.**
- j. The sum of Five Hundred Million Naira (₦500,000,000.00) as Exemplary Damages for unlawful arrest, torture and detention of the Applicant by the 1st Respondent.**
- k. And Such Further Order(s) as the Honourable Court may deem fit to make in the circumstance of this case.**

He supported it with Affidavit of 34 paragraphs. He attached documents in support of his case.

In the Written Address, his Counsel raised on his behalf an Issue for determination which is:

“Whether from the facts deposed therein, the Respondents are in breach of Applicant’s Right so as to entitle him to the grant of the Reliefs sought in this case.”

He submitted that the arrest, intimidation, torture and detention by 1st Respondent at the instigation of the 2nd & 3rd Respondents over a civil dispute is ultra vires the rights and power of the 1st Respondent and violated his Fundamental Right. An act contrary to the provision of **CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Police Act.**

That the failure of the 1st Respondent to bring him before a Court of competent jurisdiction is unlawful, illegal and contrary to **S. 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).** They relied on the case of:

PDP V. CPC

(2011) 17 NWLR (PT. 1277) 511 para C – D

That the continued call of the FIB or any agent of the 1st Respondent has frustrated him and prevented him from peaceful enjoyment of the property gifted to him. That they continued to threaten, harass, intimidate, arrest and detain him without just cause. That the 1st Respondent is empowered under the law to investigate and prosecute

criminal matter and not delve into civil disputes. He urged the Court to so hold.

That in violation of **S. 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)**, the Respondents violated his Right to Dignity of his Human Person. That he has right to, as he has done, challenge the action of the 1st Respondent at the instance of the 2nd & 3rd Respondents. He referred to **S. 34 (1) (a), 46 (1) and Order II Rule 1 of the [Fundamental Right (Enforcement Practice)] 2009**. He also cited the case of:

Uzoukwu V. Ezeonu No. II
(1991) 6 NWLR (PT. 200) 760 – 763

That action of the Respondents violated the provision of **S. 35 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)** and also contravenes his Right under the same provision of the Constitution. Hence, he has right to seek redress as he has done in this case. He referred to the cases of:

FCDA V. Joshua Gyuyu Sule
(1994) 3 FWLR (PT. 332) 257

Bello V. The Diocesan Synod of Lagos
(1973) ECSCR (PT. 2) 330 @ 334

Ajao V. Ashisu
(1973) NSCC 525 @ 533

That by the facts in the Affidavit in support of this application, it shows that the issue in dispute is purely civil

in nature and therefore the arrest of the Applicant is unlawful. The action of the 1st Respondent at the instance of the 2nd & 3rd Respondents made him suffer apprehension, restricted his movement, affected his personal liberty, belittled, humiliated and traumatized him in the presence of members of his family and adversely affected his health. That having established that the action of the Respondents violated his Rights; he is entitled to his claims. He referred to the case of:

**Comptroller General of Prisons V. Adekanye
(1999) 10 NWLR (PT. 623) 400**

That Court can award damage even when it is not expressly stated or provided for. Such damage is to deter the Respondent from further abusive of person's Right and their power under the law establishing them. He referred to the cases of:

**Ministry of Internal Affairs V. Shugaba Darman
(1982) 3 NCLR 915**

**Odogwu V. A-G Federation
(1996) 6 NWLR (PT. 456) 568 – 591**

He urged Court to so hold. He urged Court to grant his Reliefs as sought.

In opposition, the 1st Respondent filed a Counter Affidavit of 29 paragraphs and some documents were attached in support of the Counter Affidavit.

In the Written Address, the 1st Respondent raised three (3) Issues for determination which are:

- (1) Whether the Applicant has made a case under the FREP to be entitled to the Reliefs sought?**
- (2) Whether the investigation for criminal conspiracy, forgery and theft of document.**

NOTE:

The above question is not complete.

- (3) Whether this Court can restrain the 1st Respondent from the performance of his statutory duties?**

On Issue No. 1, the 1st Respondent submitted that there is no infraction of the Right of the Applicant as alleged. That the action of the 1st Respondent is in tandem with the provision of **SS. 4, 23, 24, 27 & 29 of the Police Act 2004**. That the said Section empowers the 1st Respondent to investigate any person suspected to have committed a crime. That Police acted within the powers they have under the law. That their act cannot be a violation of the Fundamental Rights of the Applicant as alleged. He referred to the case of:

Mclaren V. Jennings
(2003) NWLR (PT. 808) 470

Jim-Jaja V. COP

(2012) 2 NWLR (PT. 1231) 375 @ 390 Para B – C

That right guaranteed under CAP 4 is not absolute. That it can be tampered with following the laid down Rules and the Law. He relied on the cases of:

Emeka Ekwenugo V. FRN

(2001) 6 NWLR (PT. 708) 171 @ 177

Ikem V. Nwogwugwu

(1999) 13 NWLR (PT. 633) 140 @ 149

That the Right of the Applicant was not breached as alleged. They urged Court to resolve Issue No. 1 in favour of the 1st Respondent and hold that the invitation of the Applicant was lawful.

On Issue No. 2, he submitted that the 1st Respondent got involved in this case based on a Petition written against the Applicant. That it led to the invitation of the Applicant to the office of the 1st Respondent. That their action was in line with the law. He referred to the case of:

Fayemirokun V. CB Nigeria Limited

(2002) 10 NWLR (PT. 774) 95

That the arrest was based on the strength of the Complaint and for investigation purpose. He referred to the case of:

Kanu V. COP Imo State

(2001) 1 CHR 407 @ 408

That right of Applicant is not absolute but can be tampered with following due procedure of law. He cited the cases of:

**Badejo V Min. of Education
(1996) 8 NWLR (PT. 464) 15 @ 19**

**New Patriotic Party V. Inspector General of Police Accra
(2002) 2 HLLRA 1 @ 29**

They urged the Court to look into the reason for the invitation of the Applicant as shown in **EXH NP 1** which contains the allegation against the Applicant. He urged the Court to resolve the Issue in favour of the Respondent.

On Issue No. 3, he submitted that Police has right to receive complaints made against anyone relating the commission of crime based on the provision of **SS. 4, 23, 27 & 29 Police Act CAP 42 LFN 2004**.

That the complaint made by the 2nd & 3rd Respondents against the Applicant was based on allegation of crime. That there was a reasonable ground which made Police to invite the Applicant for the purpose of conducting investigation of the alleged crime. That by so doing, the Police did not infringe the Right of the Applicant as alleged. He referred to the cases of:

**A-G Anambra V. Chris Ubah
(2005) 15 NWLR 44 @ 67**

**Dokubo Abari V. Federal Republic of Nigeria
(2007) LRCN 152 Para F – K**

That the Affidavit of the Applicant did not disclose facts showing that his Right was infringed. Again, that he did not

attach any Exhibit to show that he was tortured. They relied on the case of:

Onah V. Okenwa
(2010) 7 NWLR (PT. 119) 512

He urged Court to dismiss the Suit with substantial cost and hold that the 1st Respondent performed its duty diligently and therefore did not infringe on the Claimant's Right.

On their part, the 2nd & 3rd Respondents filed a Counter Affidavit f 18 paragraphs. They attached 3 documents in opposition to the application.

In the Written Address, they raised an Issue for determination which is:

“Whether granting the Reliefs of the Applicant will amount to stopping the 1st – 4th Respondents from performing their constitutional duty?”

Please Note:

That the 2^d & 3^d Respondents are biological sons of the Late Sunny Odogwu and are NOT Police Officers who investigate crimes. It is only the 1st Respondent that has Right to investigate crimes.

They answered in the affirmative. That no Court of law can make an Order restraining the Police from investigating any criminal complaint or crime. That a prima facie case of stealing and forgery has been established against the Applicant as he received the title document to the Plot 1556

Asokoro, Abuja without the approval of the Board of Directors of SIO Properties Limited.

That the signature on the purported gift was forged. That 1st Respondent is empowered to investigate that. Hence the investigation of the Applicant by the 1st Respondent based on the complaint made by 2nd & 3rd Respondents. They cited the case of:

Onah V. Okenwa Supra

That the Applicant instituted this action to deceive the Court to stop the 1st Respondent from carrying out its statutory and constitutional duty. He referred to:

IGP V. Ubah Supra

That the Court lacks the power to stop Police from carrying out its duties under CAP 4 Police Act.

That the application lacks merit and should be dismissed with cost.

The 4th Respondent, Access Bank was served with the Application and Hearing Notices but it did not file any Counter Affidavit in challenge. It did not also have Counsel representative or filed any Memorandum of Appearance. It means that it had admitted all facts as alleged by the Applicant as it relates to this Suit. Besides, the Court had dismissed its Preliminary Objection challenging the competency of this Suit and its jurisdiction to entertain this Suit. Facts undenied and unchallenged are deemed admitted.

COURT

After analysis and summary of the case of the Applicant, can it be said that looking at the allegation vis a vis the Counter Affidavit of the 1st – 3rd Respondents since the 4th Respondent did not file any Counter, that there is merit in the Application and that the 1st Respondent actually violated the Rights of the Applicant at the instigation of the 2nd – 3rd Respondents and that the Applicant is entitled to the Reliefs as sought having established that his Fundamental Right was infringed?

It is the humble view of this Court that the Fundament Right of the Applicant was violated and continued to be violated as established. He had made that his case to show that his Right has been violated.

To start with, it is the right of the 1st Respondent to investigate report of crime or crime committed by anyone. It is their duty to also prosecute where there is any crime established against anyone after thorough investigation. *It is not the duty of the Police to recover document of title for anyone who have requested or made report of missing documents of title.* Where the Police, after investigation, feels that a crime has been established, they should charge the matter to Court and ensure that they prosecute same. The failure of the Police to do so in this case, infringes the Right of the Applicant.

The Constitution provides that a crime is established, that the person involved should be prosecuted. That it is only on

such condition can someone's right to personal liberty, freedom of movement, dignity of the person's human person can be infringed.

The Police was right in inviting the Applicant as they did. They were right in asking him to make statement as they did. But the continuous invitation of the Applicant after investigation without charging him to Court is an infringement of his Right.

The 2nd & 3rd Respondents concluding that the Applicant stole the document in question and that he forged their father's signature is an infringement of the Applicant's Right where there was no Judgment of the Court or report from the Police Forensic Expert to prove so. Castigating the Applicant as the 2nd – 3rd Respondents had done is an infringement on the dignity of the Applicant. Yes, it is the right of the 2nd & 3rd Respondents to report to the Police, 1st Respondent as they did but merely reporting to Police does not give them the leverage to castigate the applicant as they did.

To start with, they had never made any report to Police even while their father – Late Chief Sunny Odogwu was alive or even after his death that the said Documents of Title were missing. There was no Newspaper publication to show that such documents were missing. There is no record from the SIO Group that such document was missing not until the Applicant had gone to have the documents of title recertified that the 2nd & 3rd Respondents particularly the 2nd

Respondent woke up to claim that the document of the said land was missing and that the Deed of gift was forged.

It is no secret that in most company in Nigeria particularly family owned company, that the patriarch or matriarch as the case may be, is the alter-ego of such company and is usually the person that calls the shot in that company. It is no secret that the person who usually is the Chairman unilaterally calls the shot and takes the major decision without consulting other directors of the company especially on issue concerning gifts made to some faithful servants as in this case.

If actually the document of title of this particular land is missing, why didn't the 2nd & 3rd Respondents make a newspaper publication to that effect? Why did they not make a formal report to Police about it before or after their father passed on to eternal glory? It is simply because this document of title to the land was never missing.

This Court finds it difficult to believe that the document of title to such land is missing and the 2nd & 3rd Respondents could not make any report to the Police until the 7th of December, 2020.

To start with, the Applicant is not a stranger to the 2nd & 3rd Respondents having worked with their late father meritoriously for 25 years. Besides, the Applicant had stated that the document was gifted to him and the signed copy of the Deed of gift was handed over to the Applicant in the presence of one Chikeuba.

The Police violated the Right of the Applicant by not charging him to Court after the conclusion of their investigation. They also violated his right to own immovable property by not handing over the documents of title to him after investigation since they did not charge him to Court. Handing over the documents of title to the 2nd & 3rd Respondents after they had claimed that the documents were forged made the Police to act as Property Recovery Agency which they are not.

The 2nd & 3rd Respondents planning to sell the property to the 4th Respondent violates the Right of the Applicant because there is no Judgment of the Court that had ordered and pronounced that the Applicant stole the said documents of title.

Not returning the documents of title to the Applicant since there was no Court Order is a violation of extant provision of **S. 44 (2) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). So this Court holds.

This Court therefore holds that the action of the 2nd & 3rd Respondents in instigating the Police, 1st Respondent to release the documents of title to them violates the Right of the Applicant to own property. Police not charging him to Court violates the Right of the Applicant too in that regard. The 1st Respondent is not a Property Recovery Agency. Their action in this case obviously violates the Right of the Applicant.

The Court holds that, to the extent of the Court reasoning above, the application is meritorious. This Court therefore Order as follows:

The incessant invitation of the Applicant by the 1st Respondent about the issue of the gifted property in issue in this case without charging him to Court is unconstitutional, unlawful and a violation of the extant Right of the Applicant.

The seizure of the documents of title to the land by the 1st Respondent is a violation of the Applicant's Right to own property.

The Respondents and their agents, privies, assigns, successors in title and all other inherent from inviting the Applicant or harassing, intimidating or arresting and detaining the Applicant in relationship to this issue of the said gift of land bequeath to him.

The 1st Respondent having acted outside their statutory power, infringed on the Right of the Applicant.

The 1st Respondent is ordered to retrieve the documents of title to the said property and to release same documents of title to the Applicant without delay.

The 2nd & 3rd Respondents are perpetually restrained from selling the property to the 4th Respondent or any other person including the 4th Respondent.

The 4th Respondent is hereby restrained from purchasing the said property.

No cost or Damages awarded against the Respondents.

All parties to bear their respective costs.

No Order as to public apology.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE