

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/BW/CV/36/2022

BETWEEN:

MR. DUKE SWEETWILLIAMS AGBONAH ----- } APPLICANT

AND

INSPECTOR GENERAL OF POLICE ----- } RESPONDENT

JUDGMENT

On the 27th of February, 2022 the Applicant, Mr. Duke Sweetwilliams Agbonah instituted this action which is based on Fundamental Right Enforcement Practice (FREP) against the Respondent, Inspector General of Police claiming the following Reliefs:

- 1. A Declaration that the Nigeria Police Force is not a debt recovery agency.**
- 2. A Declaration that the Applicant's Guaranty Trust Bank Cheque with No: 75630459 dated 30th June, 2021 was obtained by the Respondent's agents from the Applicant under duress.**

3. A Declaration that the obtainment of the Applicant's Guaranty Trust Bank Cheque with No: 75630459 under duress and threat of arrest/detention as guarantee for the repayment of a debt owed by a third party is oppressive, unlawful, arbitrary, an abuse of power and a violation of the Applicant's Rights to dignity of the human person and personal liberty and property as guaranteed under Sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Article 5 & 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.
4. A Declaration that the refusal of the Respondent's agents to release and/or return to the Applicant his Guaranty Trust Bank Cheque slip with No: 75630459 obtained under duress and threat of arrest/detention as guarantee for the repayment of a debt owed by a third party is a violation of the Applicant's right to property as guaranteed under Section 44 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.
5. A Declaration that the Guaranty Trust Bank Cheque slip with No: 75630459 obtained by the Respondent from the Applicant under duress is null, void and of no effect whatsoever.
6. An Order of Perpetual Injunction restraining the Respondent, whether himself or any officer under his command and control or any other person whatsoever and howsoever described, from presenting the Applicant's

Guaranty Trust Bank Cheque with No: 75630459 to any bank or other financial institution.

7. An Order of this Honourable Court directing the Respondent to return the Guaranty Trust Bank Cheque slip with No: 75630459 back to the Applicant FORTHWITH and UNCONDITIONALLY.
8. An Order of this Honourable Court awarding the sum of One Hundred Million Naira (N100, 000,000.00) against the Respondent in favour of the Applicant as general damages.
9. AND FOR ANY OTHER ORDER OR ORDERS that the Honourable Court may deem fit to make in the circumstances.

The grounds are based on the following:

1. The Applicant's right to dignity of the human person, personal liberty and property is well guaranteed not only under the Nigerian Constitution but also under the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act particularly Section 14 thereof and cannot be derogated from except in accordance with the law.
2. The impugned actions of the Respondent have completely eroded the proprietary rights of the Applicant, thus necessitating the instant application for the enforcement of same.
3. This Honourable Court is vastly empowered to give effect to and protect the fundamental rights of all Nigerians, not only in respect to those guaranteed under the 1999 Constitution of the Federal Republic of Nigeria but also those others set out

in all fundamental rights laws, instruments and charters applicable in Nigeria.

He supported the action with an Affidavit of 8 paragraphs aside from the Statement and the verifying Affidavit. He filed a 6 pages Written Address in which he raised 2 Issues for determination which are:

- 1. Whether the Respondent – Inspector General of Police is a Debt Recovery Agency?**
- 2. Whether from the facts and circumstances of this case the Applicant is entitled to the Reliefs sought?**

On Issue No. 1, he submitted that Police is not a debt recovery/collecting agency. That the Police had over the years acted as debt recovery agency for the Nominal Complainant who patronized them over the years. That Police is not permitted to dabble into civil transaction freely entered into by parties. That invitation of the Respondent to the interference in a matter in order to collect debt on behalf of the Complainant in this Suit cannot be justified under any circumstance. He referred to the case of:

**Oceanic Securities V. Balogun & Ors
(2012) LPELR – 9218 (CA)**

That Police has no business dealing with matter or delving into matter of contractual nature between parties. That the fact that Tura Asien Ogbemor invited Police in the matter between him and Mr. Onoja Adole is no

justification for Police to get involved in the resolution of civil matter. He referred to the case of:

ME Lawrence V. Jennings
(2003) 3 NWLR (PT. 808) 470

Sunday Jimoh V. A-G Federation & 2 Ors
(1998) HRLR 513 @ 515

That there is no provision in the Police Act that empowers the Police to act as Debt Recovery Agency in order to recover debt for any person. He referred to **S. 4 of the Police Act 2020**. He urged the Court to so hold and answer the Issue No. 1 in favour of the Applicant by holding that Police has no power to act as Debt Recovery Agency.

On Issue No. 2, on whether the Applicant is entitled to the Reliefs sought given the circumstance and facts of this case, he submitted that he is entitled to his claims in this Suit. That going by the extant provision of **CAP 4 of the 1999 Constitution of Federal Republic Nigeria** (as amended), that every citizen like the Applicant has a right to seek redress where his right under the said **CAP 4 of the 1999 Constitution of Federal Republic Nigeria** (as amended) is breached or is in danger to be breached. He referred to the case of:

Gani Fawehum V. Abacha
(1996) 9 NWLR (PT. 475) 710 @ 760 – 761

That his right to liberty, dignity of his human person and right to own property have been breached by the Respondent. That he has through the Affidavit of facts

established that such right has been breached and as such he is entitled to the Reliefs sought in this case. That by **S. 46 (1) & (2) of the 1999 Constitution of the Federal Republic of Nigeria and Order II Rule 1 FREP Rules**, that he is entitled to the Reliefs sought. That by **Order XI FREP Rules 2009**, Court is empowered to make such Order, and is enjoined to do so too, as it considers just, for the purpose of enforcement of the fundamental right of the Applicant in this case.

That since he has shown that the Respondent grossly violated his Right, he is entitled to the Reliefs sought.

That the action of the Respondent is without any justification. That it is oppressive, diorama and arbitrary and worthy of redress. He urged the Court to so hold and grant the Reliefs sought.

The Respondent was served with the application on the 28th day of February, 2022. They were equally served with the Hearing Notice showing the day the matter is scheduled to be heard. But they did not enter appearance in paper or in person. They did not have any Counsel representation too. They did not give any reason for sleeping on their right. It is the law and has been upheld in several cases at all hierarchy of our Courts that unchallenged facts are deemed admitted.

Again, in any matter predicated on FREP, the Respondent, upon service of the application, has Seven (7) days within which to respond to the application. Anything outside that must be with the permission of the Court.

In this case, the Respondent was served on the 28th day of February, 2022 barely 24 hours after the Suit was filed. They were served with Hearing Notice showing that the matter is scheduled to be heard on the 7th of June, 2022. The Respondent did not take any step to defend this application or to challenge the facts as contained therein.

On the said 7th of June, 2022; almost three (3) months and two (2) weeks after the Respondent was served, the Respondent did not appear in Court. No reason was given. The Court allowed the Applicant's Counsel who was in Court to move the application and the matter was reserved for Judgment. Hence, this application is unchallenged and facts therein uncontroverted. Notwithstanding that the Court is still duty bound to decide and determine if the Applicant has discharged the onus on him in that regard as required by law.

In this case, the Applicant had alleged that the Police acted as Debt Recovery Agency which they are not by delving into a civil matter of contractual nature.

It is the story of the Applicant that sometime in 2020 his church member entered into business transaction with one Tura Asien Ogbebor. That Onoja Adole – his church member paid Seventy Three Million Naira (₦73, 000,000.00) as part payment and it remained Twenty Seven Million Naira (₦27, 000,000.00). But he was not able to pay the Twenty Seven Million Naira (₦27, 000,000.00). He was arrested by the Respondent based on the complaint of Tura Asien Ogbebor. He was later released by the Police after he had a credible Surety. That

he was subsequently invited to report at the station of the Respondent on the 30th of May, 2021. He was very sick but as law abiding citizen he decided to honour the invitation. That the said Onoja Adole begged him to accompany him to the Police station since he could not drive himself there. He, the Applicant obliged that. That on getting to the Police station, he, the Applicant was shocked when he was threatened and intimidated by the Respondent's men to be detained unless he issued a Cheque to the lawyer of the said Tura Asien Ogbebor which is a guarantee that the Onoja Adole will be returned to the Police office on the 30th day of June, 2021 failing which he will be charged as an accomplice to the suspect. That out of fear for his life he issued a Guaranty Trust Bank Cheque slip of Seventeen Million Naira (₦17,000,000.00) post dated for 30th June, 2021.

That he did so in order to save his life and liberty. That it was in the presence of the lawyer to the Ogbebor Owhoavwoduadue. That CSP Ogbonna, IPO Joe Ikwulono and Clement Akoka were witnesses to the intimidation and threat. They also spearheaded the threat. That he handed over the Cheque slip to the said officers of the Respondent. That the Cheque slip was issued as an assurance that Onoja Adole will be at the Police station on the said 30th of June, 2021. That the said Cheque slip which was issued under duress was to be returned to him once Mr. Onoja Adole appear in Police Station Zone 7 on the said 30th of June, 2021. That he stated that in writing.

That on 30th of June, 2021 he went with Mr. Onoja Adole to the Zone 7 Police Station and demanded that the said Cheque slip be returned to him as agreed but that the men of the Respondent refused to release the Cheque slip to him. They continued to dribble him. That he had visited the Police Station Zone 7 but they refused to return the Cheque slip to him until date. That he even formally wrote to the Respondent demanding that the Cheque slip be returned to him. All was to no avail. The letter was written on 20th of September, 2021. But all effort proved abortive.

That to his shock and chagrin, on the 10th of January, 2022 he was invited by the Economic and Financial Crimes Commission (EFCC) in accusation that he issued a dud cheque. That he honoured the invitation and volunteered statement to EFCC narrating his ordeal in the hand of the Respondent's men.

That the whole action of the Police intimidated him and harassed him also. That their action has infringed on his Right to personal liberty, dignity of his person and the refusal to give and return the Cheque slip as agreed had infringed on his right to own moveable property coupled with the fact that Police had acted as Debt Recovery Agency. Hence this application he is seeking enforcement of those Rights.

COURT

From all indication, it is very clear that the Police acted as Debt Recovery Agency when they forced the Applicant to issue the Cheque slip. Again, collecting the Cheque

slip from the Applicant further confirmed that fact. By so doing, the Police violated even their statutory power which prohibits him from acting and meddling into civil matter and acting as Debt Collector for the Tura Asien Ogbemor. The Police ought to have referred the matter to Court.

They also grossly violated the Right of the Applicant who obviously has nothing to do with the business between Tura Asien Ogbemor and Onoja Adole.

Again, threatening to arrest and detain and further arrest and detain the Applicant surely violated his Right both under the 1999 Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples Rights. The invitation of the Applicant on allegation of issuance of Dud Cheque is illegal because the said Cheque was collected from the Applicant by the Police in a bid to help Tura Asien Ogbemor recover the money allegedly owed by Onoja Adole.

The totality of the action of the Police in this case is unlawful, illegal, unconstitutional and gross violation of the Right of the Applicant. By even withholding the Cheque slip which they collected from the Applicant under duress and their refusal to release same even after the said Onoja Adole appeared in the Police Station on the 30th of June, 2021 further confirmed that the sole aim of the Police is to recover the debt for Tura Asien Ogbemor. This is further buttressed by the fact that Police even invited the Applicant when they claimed that the Cheque was dud. The threat to investigate the Applicant on Dud Cheque is action too far. Most importantly, the

victimization, harassment and oppression of the Applicant in relation to that Cheque, violated the Applicant's Right too. That action affected and violated the dignity of the Applicant's human person and liberty. The withholding of the Cheque slip which was based on Onoja Adole appearing in Police Station Zone 7 on 30th June, 2021 also violated the Applicant's Right to own property.

Obviously, the action of the Respondent's men inflicted some grave injuries on the Applicant, causing fear, distress, apprehension on him. The Police actually, by their action, grossly trampled on the Rights of the Applicant as claimed.

It has been held in our Court and as provided in the Constitution that once a person has established that his Right was violated, that he is entitled to be compensated in form of payment of Damages to him. The Applicant has established that his Rights were grossly and severally violated by the Respondent's men (Police) in this case.

Again, it has been held that where a party is served with a Process accusing such party of violating a person's Right and that party fails to state its own side of the story showing that such allegation is unfounded or that its action has legitimacy, that it is deemed to have accepted and admitted committing that wrong with which it is accused of. Hence, unchallenged and uncontroverted facts are deemed admitted; more so where that party was given all the leverages to do so judicially. That is the fate of the Respondent in this case as they did not file any

Counter to this Application though they were served with the Application and Hearing Notices.

This Court therefore holds that the Respondent have admitted all the facts raised against it in this Suit having not challenged them.

Again, the Court also holds that the Respondent violated the extant Rights of the Applicant as alleged. The Applicant having established that his Rights were violated is therefore entitled to his claims to wit:

Prayer 1, 2, 3, 4, 5, 6 & 7 granted as prayed.

Prayer 8 not granted.

The Court hereby Order the Respondent to tender apology to the Applicant for violating his Right.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE