

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/2519/2021

DATE: 22ND NOVEMBER, 2022

BETWEEN:

SULEIMAN YUSUF.....APPLICANT

AND

MUA'ZU MOHAMMED.....RESPONDENT

APPEARANCE:

Bashir .S. Ahmad Esq with V. M. AghoghobalaEsq for the Applicant.

JUDGMENT

By a Motion on Notice, dated 29th day of September, 2021 filed same day, brought pursuant to order 2, Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and under the inherent Powers of the Court; The Applicant herein prayed the Court for the following reliefs:-

1. A Declaration that the Respondent's acts of squeezing, attacking, beating and stripping the Applicant naked in the eyes of the public (the security guard and the labourers around) and strangulating the Applicant to near unconscious level have amounted to violating of the

Applicant's Fundamental Right to life and right to dignity of human person guaranteed under Sections 33, 34 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

2. An Order of Mandatory injunction restraining the Respondent whether by himself, servants, agents privies or howsoever named from further attacking, beating and stripping the Applicant naked in the eyes of the public (the security guard and the labourers around) and strangulating the Applicant to near unconscious level at any time and or anywhere whatsoever.
3. An Order, directing the Respondent to pay the sum of ₦50,000,000.00 (Fifty Million Naira) only as aggravated and exemplary damages and compensation for the aforesaid violations of the Applicant's Fundamental Rights.
4. A written Apology published in at least two National dailies newspaper to the Applicant by the Respondent apologizing for the unwarranted and unjustified violation of the Applicant's Fundamental Rights guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended).
5. Cost of the proceedings.

The Application is supported by an Affidavit of 13 paragraphs deposed to by the Applicant himself. Also, accompanying the Application is a statement of particulars of the Applicant, grounds upon which the reliefs are sought, some Exhibits marked Exhibits A1, A2, and B respectively, as well as a written address.

Meanwhile, in opposition to the Application, the Respondent filed a Counter Affidavit of 18 paragraphs deposed to by one Aminu Ibrahim, a cousin to the Respondent. Some annexures marked Exhibits D1, D2, D3, and D4 respectively, as well as a written address.

In response to the Counter Affidavit, the Applicant filed a further and Better Affidavit of 15 paragraphs deposed to by the Applicant himself, annexures marked Exhibits S1, S2 and S3 as well as reply on points of law to the Respondent's Counter Affidavit of 7th December, 2021.

Now, by the provisions of Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) anyone who alleges that any of the provisions of chapter iv of the Constitution (Supra) has been, is being or likely to be contravened in the relation to him, may apply to a High Court in the State for redress.

Therefore, in applications of this nature, the Applicant is required to prove by cogent and compelling facts that his Fundamental Rights are being, have been or are likely to be infringed, on the strength of his Affidavit Evidence.

See: DONGTOE V. CIVIL SERVICE COMMISSION PLATEAU STATE & ORS (2001) LPELR-969 (SC); ADAMU V. C. O. P KADUNA STATE COMMAND & ANOR (2019) LPELR-49456 (CA); ABUJA ELECTRIC DISTRIBUTION COMPANY PLC ORS V. AKALIRU & ORS (2021) LPELR-54212 (CA).

In the instant case, the Plaintiff deposed in his Affidavit among other things that he is a staff of the Sharia Court of Appeal of the Federal Capital Territory and the Registrar of the Upper Area Court sitting at Kado F.C.T Abuja.

The brief facts of the Applicant's case as distilled from the supporting Affidavit is that the Respondent is a Plaintiff in suit **NO. CV/10/2021 MOHAMMED V. NANA FIDDAUSI** filed before the Upper Area Court sitting at Kado, Abuja.

That on Saturday the 11th of September, 2021 while he was in his office for his official duty, the Respondent suddenly came into his office, attacked him, strangled and squeezed his neck and demanded the Applicant give

him documents of their house being subject matter in the suit mentioned earlier.

According to the Applicant he struggled with the Respondent and tried to free himself while shouting for help till the security guard one Zayyanu who was on duty at the gate heard the noise and came in find out what was going on.

According to the Applicant, despite the intervention of the security guard and before the arrival of the labourers working in a nearby site who later came to his rescue, the Respondent had torn his clothes and left him with boxers only.

He deposed further that as a result of the strangulation by the Respondent, he began to feel choked, dizzy and nearly fell unconscious.

The Applicant also attached photographs in that regard marked Exhibits A1 and A2 respectively.

It is further deposed by the Applicant that prior to arrival of the labourers, despite the ongoing struggle between him and the Respondent, in order to prevent the Respondent gaining, entrance to the Judge's Chambers, the Respondent overpowered him, broke into the Judges Chambers door, rampaged the office looking for the documents of the house, but could not find the documents.

Applicant further averred that he had to borrow clothes from the security guard to wear out as his clothes were torn beyond use. He later reported the matter to the Life Camp Police Station.

According to the Applicant initially the Police could not arrest the Respondent as he had been on the run for over a week up until the 16th of September 2021, when he was arraigned before the Grade 1 Area Court at Kado, Abuja on the 17th of September 2021 on a first information report (F. I. R) also attached as Exhibit B.

Further deposed that the Respondent on the day of the incident vowed that he will definitely kill the Applicant if he doesn't give him the documents of their house.

He urged the Court, in the interest of Justice to grant the reliefs sought.

Meanwhile, in the written address in support of the Application, learned Applicant's Counsels Bashir .S. Ahmed Esq, submitted that the Applicant's Affidavit and the Exhibits attached disclose sufficient grounds warranting the grant of the reliefs sought, since the acts of the Respondent on the day of the incident has infringed on the Applicant's Fundamental right to life, right to dignity of the human person guaranteed under Sections 33, 34 of the Constitution (Supra) as well as the Rights under Section 41 thereof.

Reliance was placed on Section 46 of the Constitution (Supra).

It is further submitted that the Principal relief sought is for the enforcement or for securing the enforcement of the Applicant's rights.

Counsel urged the Court to consider the reliefs sought, the facts relied upon by the Applicant and the grounds predicating the Application.

That where the alleged breach (s) is proved, the Applicant is entitled to damages and public apology. Learned Counsel cited several authorities in support of the Application to wit:-

- 1. BELLO & ORS V. A. G. OYO STATE (1986) 12 SC.1**
- 2. A.G. KADUNA STATE V. HASSAN (1985) 8 NWLR (PT. 8) 843.**
- 3. ADESANYA V. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA (1981) 2 NCLR – 358.**
- 4. EKANEM V. A. I. G. P (2008) 5 NWLR (PT. 1079) 92 @110.**
- 5. FEDERAL REPUBLIC OF NIGERIA V. IFEGWU (2003) 15 NWLR (PT. 842) 113 @ 180.**

6. **SEA TRUCKS (NIG). LTD V. ANIGBORO (2001) 1 NWLR (PT. 696) 159, Per Akintan, JSC.**
7. **OFFOBOCHE V. OGOJA LOCAL GOVERNMENT (2001) 16 NWLR(P.T. 739).**
8. **IBRAHIM V. OSIM (CITATION INCOMPLETE.**
9. **FEDARE V. A. G OYO STATE (1982) 4 SC 1 at 6-7.**
10. **SECTION 46(1) & 2, Section 35 (6) of the CFRN 1999(as amended).**
11. **MRS. OBISI V. NIGERIA NAVY (1999) 1 FHCLR, 609.**
12. **ONAGORUWA V. INSPECTOR GENERAL OF POLICE(1993) 5 NWLR (PT. 193 593 @ 650-651.**

Relying, further on the Applicant's depositions as well as Exhibits A1 and A2, Learned Counsel urged the Court to grant all the reliefs sought by the Applicant.

On his part, the Respondent in his Counter Affidavit, particularly paragraph 3 thereof denies Applicant's paragraph 3 and averred that it was the Applicant who invited him to his office on a Saturday morning, the 11th of September 2021, a weekend outside the official working days.

Further averred in subsequent paragraphs of his Counter Affidavit among others, that it was the Applicant who engaged him in a round table discussion over the documents of the assets of his deceased mother Mrs. HafsatuMu'azu, which Applicant is privy to, being a Registrar of the Court.

Respondent averred in paragraphs 5, 6, 7, 8, 11, 13, 14, 15, 16 and 17 as follows:-

"5. The Respondent denies paragraph 5 of the Affidavit and states that the Applicant demanded certain sum of

money from the Respondent before he can release the Documents to him, which the Respondent refused.

- 6. The Respondent denies paragraph 6 of the Affidavit and states that this refusal to give the Applicant the money demanded led to exchange of words between them which led to the two jerking themselves and exchanging more words on a discordant mood the issue never transpired outside the office but right inside the office.*
- 7. The Respondent denies paragraph 7 of the Affidavit and states that he never strangled the Applicant. The Applicant capitalized on the mental ill health of the Respondent to cook up stories of strangulation. Both parties fought and left the scene with rumpled clothes as a result of the jerking and drain. The medical reports of the mental challenge of the Respondent as well as his torn clothes are attached and marked Exhibit D1, D2 and D3.*
- 8. The Respondent denies paragraph 8 of the Affidavit and states that the Judge's chambers was under lock and key. Both the Applicant and Respondent dragged themselves towards the door and ripped off the padlock of the entrance door.*
- 11. The Respondent denies paragraph 11 of the Affidavit and states that the Applicant demanded for compensation over his torn clothes which the Aunt of the Respondent paid. The receipt of compensation paid is pleaded as Exhibit D4. The Applicant also contradicted his earlier averment in paragraph 9 where he stated the Respondent left the office as against the*

current averments that the Respondent ran out with threats to kill him.

- 13. The Respondent further avers that the Applicant arranged a Saturday meeting with the mentally challenged respondent to blackmail and extort money from the Mohammed family as he as always mounted pressure on him over the assets of their late mother.***
- 14. The Respondent further states that the Applicant knew Saturday are off record in Judicial working days and took the advantage to pounce on the initiative of the Mohammed family to benefit from the wealth of the Mohammed family. This he did by inviting the mentally challenged Respondent without the notice of other family members as known for a reasonable period of time.***
- 15. The Respondent avers that he lost his I Phone 12 valued at ₦500,000, Navy Force Wrist watch valued at ₦18,000, wallet containing ₦30,000, Palm Slippers and a torn cloth***
- 16. The Respondent urges the Court to dismiss the defective, scandalous and deceptive Application of the Applicant.***
- 17. The Respondent further prays the Court to award ₦150,000,000 (One Hundred and Fifty Million Naira) only being pecuniary damages to the Respondent and family for breach of trust and blackmail."***

The Respondent also annexed Medical reports including a report from Aminu Kano Teaching Hospital, Kano stating that he has been an outpatient seen for a psychological disorder in the speciality Clinic of the Hospital since 26th October, 2021. He also attached a photograph as well

as a transaction receipt showing transaction of 15,000 NGN sent by Binta Adamu Mohammed to the receiver, Suleiman Yusuf with Account NO 2130755274 on Thursday September 16 2021, attached as Exhibit D4.

Meanwhile, in the address in support of the Respondent's Counter Affidavit, Eze Chekwube Esq, Respondent's Counsel made submissions on two issues.

Firstly on issue one which is was the Fundamental Right of the Applicant breached based on the disagreement over monetary demand?

Submitted in that regard that he who asserts must prove. And that in the instant case it must be proved beyond Reasonable doubt. Counsel referred the Court to section 131 of the Evidence Act.

Learned Counsel further submits that the two parties met in the Applicant's office outside the official working days of the week, being a Saturday to discuss on how to procure documents of the Respondent's mother's assets. That Applicant demanded for a certain sum of money as a personal backdoor consideration for the release of the documents which he is personally privy to.

Therefore, Learned Counsel argued that there is no breach of Applicant's Fundamental rights as alleged.

Counsel further urged the Court to consider that the case of **ADESANYI V. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA (SUPRA)** cited by Applicant's Counsel is inapplicable in the instant case and urged the Court to discountenance submissions of Applicant's Counsel in that regard, while citing **TUKUR V. THE GOVT. OF GONGOLA STATE & ORS (1997) 6 NWLR(Pt. 510) at 576 to 577**, in support of his submissions.

Submitted further that the Applicant in paragraph 5:0 of the address made a case against himself on when a claim succeeds as failing under the fundamental Rights, since there's no such breach in this case.

Submitted further that it is trite law that a person is not entitled to a relief in an action he is a wrongdoer.

Counsel cited the following case to support his submissions on issue one to wit:-

(1) ASHTON V. TURNER (1981) QB 137.

On issue two which is whether in the circumstance, the Respondent is entitled to his own Claims of breach of Trust?

Learned Counsel submitted, that the Applicant breached the trust in the face of his official privileges to extort money from the Mu'azu family.

Submitted moreso, that the Applicant disobeyed the order of Court to release the documents in his custody, and rather placed a Saturday schedule with the Respondent outside judicial working days, bordering on gross misconduct.

The Court is urged to grant Respondent's Claims of damages on extortion, blackmail and gross misconduct, while relying on the receipt evidencing payment to the Applicant duly pleaded.

Learned Counsel also cited **MICHEAL UZOAGBE & ANOR V. COMMISSIONER OF POLICE (2012) LCN/3906 (SC).**

In conclusion, Leaned Counsel submitted that the Applicant has failed to prove any form of breach of Fundamental Rights as he alleged, and to consider that the Respondent has proved his claims and to dismiss the frivolous and misleading Application of the Applicant and to grant the pecuniary reliefs of ₦150,000.000 in favour of the Respondent.

Well, in his further and better Affidavit, Applicant has denied ever inviting the Respondent to his office, and averred that the respondent being a long time litigant always knew the Applicant sometimes works on Saturdays.

Applicant avers in paragraphs 7, 8, 9, 10 and 14 as follows:-

- "7. That paragraphs 9, 10 and 11 of the Counter Affidavit are not true and that I have never demanded for any compensation as the Respondent has my account number because of the previous service I rendered to them in the course of official duties in respect of the suit pending in our Court.**
- 8. That I was so surprised when I received the credit alert from the Respondent's aunt I immediately called her and demanded her account number to refund her money and which she did.**
- 9. That I went to a nearby POS and sent her ₦15,000.00 back to her. The text message of her account number she sent to me and the evidence of refund of ₦15,000.00 to the Respondent's aunt are attached and marked Exhibit S1 and S2, respectively.**
- 10. That paragraphs 12, 13 and 14 of the Counter Affidavit are not true and that I was not aware of any mental challenge with the Respondent as the Respondent filed suit No. CV/10/2021: Muazu Mohammed v. Nana Fiddausi this year (2021) in our Court and personally without a lawyer and he has been appearing in person.**
- 14. That it shall serve the interest of justice if the Application is granted and to discountenance the Respondent's Counter Affidavit."**

He also attached 2 Exhibits in support of the further and better Affidavit and a reply on points of law.

Well, I have carefully considered this Application, the reliefs sought, the statement accompanying the Application, the supporting Affidavit, the grounds predicated same, the Exhibits annexed, the further and better

Affidavit of the Applicant, the Exhibits annexed and the two addresses filed in support of the Application.

In the same vein, I've equally given due consideration to the Respondent's Counter Affidavit, the Exhibits annexed and the written address filed in support of same.

In a bid to determine this Application I shall raise two issues to wit:-

- "1. Whether the Applicant has satisfied the Court to be entitled to the Reliefs sought in this Application?"***
- 2. Whether the Respondent is entitled to pecuniary damages?"***

On issue one, let me begin by saying that such Applications are fought and won on Affidavit evidence.

See:-**ALUKO & ANOR V. C. O. P & ORS (2016) LPELR-41342 (CA); DANGOTE V. CIVIL SERVICE COMMISSION PLATEAU STATE & ORS (2001) LPERL-959 (SC); EBO & ANOR V. OKEKE & ORS (2019) LPELR-48090.**

In the instant case, the Applicant has alleged that Respondent attacked him strangled him, tore his clothes and threatened to kill him on the day of the alleged incident.

Now, having carefully analyzed the facts presented by the Applicant, vis-à-vis the Counter Affidavit of the Respondent, I must state that a lot of questions arise in my mind which cannot be effectively determined in Applications of this nature where no oral evidence is called.

For instance, although there's no law that prevents a staff of the Judiciary from going to his office on weekends to carry out some official duties, it is rather strange for the Respondent to have picked that particular Saturday in question to attack the Applicant as alleged.

Secondly, it is a well-known fact, and one which this Court can take Judicial Notice of, that Courts are closed on non-working hours and weekends, and there is security manning the Entrances and gates of the Courts. Therefore, the question is how did the Respondent gain access to the Applicant's office? Who gave the security permission to allow the Respondent access to the Court premises outside official working hours? The Applicant has admitted being shocked when he received alert of a transaction from Respondent's sister after the occurrence of the incident (i.e Exhibit annexed to the Counter Affidavit) the question that begs an answer is how did the Respondent and his family acquire Bank Account details of the Applicant?

In addition, the Applicant has reported the incident to the Police which is now a Criminal matter pending before the Grade 1 Area Court, sitting at Kado, Abuja,.

On an F.I.R of Criminal Trespass, Criminal intimidation, Criminal force and assault, causing hurt and mischief, offences punishable under the penal Code.

Undoubtedly, witnesses would have to be called in the case such as the Security guard &ors who were present on the day of the alleged incident.

Therefore, in the instant case, I do not think as stated earlier that this matter can be effectively determined as a Fundamental Rights Enforcement action.

The allegations are Criminal allegations which must be proved beyond reasonable doubt in line with the provision of Section 135(1) of the Evidence Act 2011.

The Section Provides thus:-

"(1) If the Commission of a Crime by a party to any proceeding is directly in issue in any proceeding Civil or Criminal, it must be proved beyond reasonable doubt."

In the circumstances therefore, it is my candid opinion that the Applicant has not satisfied the Court to be entitled to the reliefs sought.

Therefore the first issue is resolved in favour of the Respondent against the Applicant.

This brings me to issue two. The Respondent did not initiate this action, and applying the same reasoning on the need to call oral evidence to resolve the issues in this Application, it is my view that the Respondent has also not made out a case to be entitled to pecuniary damages in this Application for Enforcement of Fundamental Rights. I so hold.

Consequently, issue two is resolved against the Respondent.

In all, I find no merit in this Application and it is accordingly dismissed.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

22/11/2022