

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 5TH NOVEMBER, 2022

FCT/HC/CV/1338/2022

BETWEEN

FRANCIS BOBAI MATHEW-----

APPLICANT

AND

ECONOMIC AND FINANCIAL CRIMES COMMISSION----- RESPONDENT

JUDGMENT

This Judgment is in respect of an Application for the Enforcement of the Fundamental Right of Mr. Francis Bobai Mathew, the Applicant herein, brought by way of an Originating Motion filed on the 25th of April, 2022 together with supporting documents as prescribed by law and seeking the following reliefs to wit:-

1. **A DECLARATION** that the invitation, arrest and detention of the Applicant curtailing his freedom of movements by the Economic and Financial Crimes Commission on the 14th day of March, 2022 and till 17th day of March, 2022 without committing any offence known to law and without trial amounts to a gross violation of the Applicants right to

personal liberty to freedom of movement is unconstitutional, unlawful and infringement of the Applicants right to dignity of human person.

2. Right to personal liberty, right to fair hearing as well as freedom of movement.
3. **AN ORDER** of this Court awarding the sum of ₦ 100,000,000.00 (One Hundred Million Naira) only as general and exemplary damages in favour of the Applicant against the Respondent for the financial loss, emotional and psychological trauma suffered by the Applicant as a result of unlawful arrest and detention, fear, humiliation, threat, continued detention caused him by the Respondent.
4. **AN ORDER** of the Court restraining the Respondent from further inviting, arresting and or detaining the Applicant pending the hearing and determination of the Applicant Motion on Notice.
5. **ANY OTHER ORDER(S)** as this Court deem fit to make in the interest of justice.

The Originating Motion was supported by a Statement containing 9 grounds upon which the reliefs in the Application were sought, a 33 paragraphed Affidavit with Exhibits numbered "Exhibit A to E10 and a Written Address. The Applicant in his Written Address formulated 2 issues to wit:-

1. *Whether the arrest and detention of the Applicant from the 14th day of March, 2022 till 17th day of March, 2022 without committing offence(s) and the subsequent continuous detention of the Applicant by the Respondent without trial are not breach of the Applicants fundamental*

rights as enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

2. Whether from the circumstances of this case the Applicant is entitled to the reliefs sought?

The Applicant opted to argue both issues raised jointly, stating that by virtue of the provision of the Constitution of Nigeria as amended in Sections 34, 35, 36 and 41, the issues raised were to be answered in the affirmative and in favour of the Applicant. The Applicant further argued that the Respondents duties are restricted to economic and financial crimes alone and do not extend to contractual or civil disputes. In support of his position, the Applicant cited a plethora of authorities. Therefore, the crux of the Applicants argument gleaned from his Affidavit and Written Address is that the Respondent had arrested and detained him on grounds which were not criminal.

In response, the Respondent filed a 20 paragraphed Counter Affidavit with Exhibits numbered Exhibit EFCC 1 to 5 and a Written Address on the 27th of May, 2022 and regularized on the 30th of May, 2022. The Respondent argued that they had received a Petition from Cynio Tower Attorneys bordering on alleged acts of conspiracy, impersonation, Extortion, Criminal Breach of Trust and Cheating against one Assistant Superintendent of Police- Peter Ejike and the Applicant herein and that it was based on this Petition that they commenced investigatory activities. The Respondent in its Written Address raised a sole issue to wit:

"Whether from the facts of this case, the Claimants are entitled to the reliefs sought"

The Respondent in answering their sole issue raised stated that by virtue of the provisions of **SECTION 6 AND 7** of the **ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT) ACT 2004** they had been saddled with the power to investigate all financial crimes and further stated that the Applicant is using this process as a disguised attempt to stifle the investigation and possible prosecution of this case. The Respondent stated further that the Applicant is not entitled to the reliefs sought because the law is trite that a Court cannot make orders to restrain a law enforcement agent in the performance of its statutory duties. Also, the Respondent referring the Court to the case of **ESABUNOR & ANOR V. FAWEYA & ORS (2019) LPELR-46961B (SC)** stated that damages are awarded on sound and well settled legal principles and not on sentimental or arbitrary grounds and that the assessment of damages should be based on pleadings and evidence adduced and where there is no evidence to support a claim for damages, the claim should be dismissed. The Respondent therefore concluded by urging the Court to dismiss the application of the Applicant.

After a careful appraisal of the entire processes filed by both parties, I am of the informed opinion that in order to attain the ends of justice, a sole issue which needs to be addressed is:-

"WHETHER THE RESPONDENT IN CARRYING OUT ITS STATUTORY DUTIES INFRINGED UPON THE FUNDAMENTAL RIGHTS OF THE APPLICANT"

In the case of ***NIGERIAN ARMY & ORS V. OYEWOLE (2021) LPELR 55113(CA)*** the Court of Appeal deciding on the importance of Fundamental Rights matters stated thus:-

"THE FUNDAMENTAL RIGHTS OF EVERY CITIZEN IN THIS COUNTRY IS GUARANTEED BY THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED). IT IS THE DUTY OF EVERY COURT TO SAFEGUARD FUNDAMENTAL RIGHTS. THE ENDEAVOR AND ABILITY TO HONOUR, APPLY AND DEFEND THOSE FUNDAMENTAL RIGHTS IS A MAJOR YARDSTICK TO MEASURE TRUE DEMOCRACIES AND THE PREVALENCE OF THE RULE OF LAW. WITHOUT THE RULE OF LAW, ANY PROFESSION OF OR CLAIM TO DEMOCRACY BY ANY STATE IS A SHAM. SEE AKULEGA V. BENUE STATE CSC (2002) 2 CHR 1 AT 37." PER ABUBAKAR MAHMUD TALBA, JCA (PP 17 - 17 PARAS C - E)

Furthermore, in ***FATUNMBI V. EFCC & ANOR (2022) LPELR 57063(CA)*** the Court of Appeal further stated thus:

"IN THE WORDS OF OGUNWUMIJU, JCA (NOW JSC) IN OKAFOR VS. NTOKA (2017) LPELR (42794) 1 AT 20 - 21: "THE IMPORTANCE OF FUNDAMENTAL RIGHTS TO THE CITIZENRY CANNOT BE OVER-EMPHASIZED. THEY ARE RIGHTS THAT ARE NOT ONLY BASIC TO HUMANS, THEY FORM THE BEDROCK FOR A FREE SOCIETY DEVOID OF FORCES OF UNBRIDLED AGGRESSION, OPPRESSION, REPRESSION, AUTHORITARIANISM. THEY HAVE BEEN ENTRENCHED IN CHAPTER IV OF THE 1999 CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA (AS

AMENDED) DUE TO THEIR SACROSANCT NATURE AND IMPORTANCE. WHEN APPLICANTS APPROACH THE COURTS FOR THE ENFORCEMENT OF THESE RIGHTS, THE COURT MUST WITHIN REASONABLE LIMITS DO ALL THAT IS NECESSARY TO ENSURE THAT THESE RIGHTS ARE PROTECTED." PER UGOCHUKWU ANTHONY OGAKWU, JCA (PP 26 - 26 PARAS B - F)

Therefore, Fundamental Rights of the Citizens must be safeguarded at all times and truly at all cost as this is the only way to protect our delicate Democracy. However, in attempting to protect and safeguard the Fundamental Rights of Citizens, Courts must be careful to ensure that they are not restricting agencies of Government from carrying out their statutorily allocated duties as this will totally defeat the intendment of the law. The Applicant herein is of the view that he was unlawfully invited and detained by the Respondent for an action which is not criminal and which should be settled using civil settlement mechanisms and processes. However, **EXHIBIT EFCC 1** in the Respondents Counter Affidavit is a criminal Petition which the Respondent received and for which the Respondent did invite the Applicant in order to carry out further investigations. To my mind, the Respondent in inviting the Applicant was acting within the powers conferred on it by virtue of the provisions of **SECTION 6 AND 7 OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT) ACT 2004**. Particularly, **SECTION 7 (1) (A)** provides that:-

THE COMMISSION HAS POWER TO:-

- (a) CAUSE INVESTIGATIONS TO BE CONDUCTED AS TO WHETHER ANY PERSON, CORPORATE BODY OR ORGANIZATION HAS COMMITTED ANY OFFENCE UNDER THIS ACT OR OTHER LAW RELATING TO ECONOMIC AND FINANCIAL CRIMES.*
- (b) CAUSE INVESTIGATIONS TO BE CONDUCTED INTO PROPERTIES OF ANY PERSON IF IT APPEARS TO THE COMMISSION THAT THE PERSON'S LIFESTYLE AND EXTENT OF THE PROPERTIES ARE NOT JUSTIFIED BY HIS SOURCE OF INCOME*

SECTION 6 (q) of the Act provides thus:-

CARRYING OUT SUCH OTHER ACTIVITIES AS ARE NECESSARY OR EXPEDIENT FOR THE FULL DISCHARGE OF ALL OR ANY OF THE FUNCTIONS CONFERRED ON IT UNDER THIS ACT.

Therefore, an important sub-issue which this Honourable Court ought to resolve is "*whether the Respondent in carrying out their duties were reasonable and acted within the confines of the law*". The case of **AWAL V. NDLEA (2020) LPELR-50160(CA)** is very instructive in this regard. The Court of Appeal deciding on whether a person arrested and detained has to be brought before a Court of law within a reasonable time; and meaning of reasonable time; when a detention will be held to be illegal and unlawful held thus:-

"...WHILE THE APPELLANT STATED THAT HE WAS CHARGED TO COURT ON THE 22ND OF MAY 2017 SINCE HIS DETENTION, THE RESPONDENT DEPOSED TO THE FACT THAT THE APPELLANT WAS

CHARGED AND ARRAIGNED IN COURT ON THE 23RD OF MAY 2017. A SIMPLE ARITHMETIC WOULD REVEAL THAT THE APPELLANT WAS DETAINED FOR A PERIOD OF 50 OR 51 DAYS AS THE CASE MAY BE. BY VIRTUE OF SECTION 35 (4) OF THE CONSTITUTION (SUPRA), THE RESPONDENT WAS REQUIRED TO BRING THE APPELLANT BEFORE A COURT WITHIN A REASONABLE TIME. **WHAT AMOUNTS TO REASONABLE TIME WAS DEFINED UNDER SECTION 35 (5) OF THE CONSTITUTION TO MEAN THAT IN THE CASE OF AN ARREST OR DETENTION IN ANY PLACE WHERE THERE IS A COURT OF COMPETENT JURISDICTION WITHIN A RADIUS OF FORTY KILOMETRES, A PERIOD OF ONE DAY; AND IN ANY OTHER CASE, A PERIOD OF TWO DAYS OR SUCH LONGER PERIOD AS IN THE CIRCUMSTANCES MAY BE CONSIDERED BY THE COURT TO BE REASONABLE.** THE QUESTION IS, ASSUMING THE ARREST OF THE APPELLANT WAS LAWFUL IN THE EYE OF THIS COURT, CAN HIS DETENTION FOR A PERIOD 50 OR 51 DAYS BEFORE BEING BROUGHT TO COURT BE CONSIDERED A REASONABLE PERIOD AND THUS LAWFUL? MY ANSWER IS IN THE NEGATIVE. AS A MATTER OF FACT, THE APPELLANT IS FACING A CHARGE OF CONSPIRACY AND UNLAWFULLY DEALING IN 550 GRAMS OF CANNABIS SATIVA, A NARCOTIC DRUG SIMILAR TO COCAINE, HEROIN AND LSD. SEE EXHIBIT NDLEA 1 ATTACHED AS EXHIBIT TO THE RESPONDENT'S COUNTER AFFIDAVIT AT PAGE 30 OF THE RECORD OF APPEAL). THE RESPONDENT MADE CONCERTED EFFORTS TO GIVE REASONS FOR THE APPELLANT'S DETENTION IN PARAGRAPHS 4(D) OF THE COUNTER AFFIDAVIT.

ACCORDING TO THE RESPONDENT, THE DETENTION OF THE APPELLANT FOR A LONGER PERIOD WAS BECAUSE OF THE FOLLOW-UP OPERATION CARRIED TO ARREST HIM TO ENABLE THE OFFICE TO PROPERLY INVESTIGATE THE ALLEGATIONS AND PROSECUTE THE CASE APPROPRIATELY. **THE EXCUSE IN MY OPINION IS UNTENABLE AND SINCE THE OFFENCE FOR WHICH THE APPELLANT IS CHARGED IS NOT A CAPITAL OFFENCE WHICH COULD HAVE RENDERED THE APPLICABILITY OF SECTION 35 (4) (5) AND (6) OF THE CONSTITUTION IMPOSSIBLE AS PROVIDED UNDER SECTION 35 (7) (A) OF THE CONSTITUTION (SUPRA).IF THE RESPONDENT HAD ANY JUSTIFIABLE REASON FOR THE CONTINUOUS DETENTION OF THE APPELLANT, RECOURSE SHOULD HAVE BEEN MADE VIDE AN APPLICATION REQUESTING THE COURT FOR AN ORDER TO REMAND THE APPELLANT IN ITS CUSTODY ...ALTHOUGH THE EFFECTIVE DISCHARGE OF THE DUTIES AND RESPONSIBILITIES OF THE RESPONDENT IS FOR THE BETTERMENT OF THE ENTIRE CITIZENS OF THE FEDERAL REPUBLIC OF NIGERIA, ITS NEIGHBOURING STATES AND THE GLOBAL COMMUNITY, HOWEVER, ITS OFFICIALS SHOULD NOT BE GIVEN THE INDISCRIMINATE LATITUDE TO TRAMPLE ON EXISTING SACROSANCT AND IN ALIENABLE RIGHTS OF HUMAN PERSONS GUARANTEED UNDER OUR RELEVANT LAWS.**" PER ADAMU JAURO, JCA (PP 19 - 24 PARAS C - D)

Furthermore, the Court of Appeal in the case of **AWAL V. NDLEA (SUPRA)** stated thus:-

THE RULES GUIDING ARREST AND DETENTION ARE STATUTORILY PROVIDED UNDER SECTION 35 (4) (5) (6) AND (7) THE CONSTITUTION (SUPRA). SECTION 35 (4) (5) (6) OF THE CONSTITUTION PROVIDES AS FOLLOWS: 35. ANY PERSON WHO IS ARRESTED OR DETAINED IN ACCORDANCE WITH SUBSECTION (1) (C) OF THIS SECTION SHALL BE BROUGHT BEFORE A COURT OF LAW WITHIN A REASONABLE TIME, AND IF HE IS NOT TRIED WITHIN A PERIOD OF (A) TWO MONTHS FROM THE DATE OF HIS ARREST OR DETENTION IN THE CASE OF A PERSON WHO IS IN CUSTODY OR IS NOT ENTITLED TO BAIL; OR (B) THREE MONTHS FROM THE DATE OF HIS ARREST OR DETENTION IN THE CASE OF A PERSON WHO HAS BEEN RELEASED ON BAIL, HE SHALL (WITHOUT PREJUDICE TO ANY FURTHER PROCEEDINGS THAT MAY BE BROUGHT AGAINST HIM) BE RELEASED EITHER UNCONDITIONALLY OR SUCH CONDITIONS AS ARE REASONABLY NECESSARY TO ENSURE THAT HE APPEARS FOR TRIAL AT A LATER DATE. (5) IN SUBSECTION (4) OF THIS SECTION, THE EXPRESSION "A REASONABLE TIME" MEANS - (A) IN THE CASE OF AN ARREST OR DETENTION IN ANY PLACE WHERE THERE IS A COURT OF COMPETENT JURISDICTION WITHIN A RADIUS OF FORTY KILOMETRES, A PERIOD OF ONE DAY; AND (B) IN ANY OTHER CASE, A PERIOD OF TWO DAYS OR SUCH LONGER PERIOD AS IN THE CIRCUMSTANCES MAY BE CONSIDERED BY THE COURT TO BE REASONABLE.(UNDERLINING MINE FOR EMPHASIS) (6) ANY PERSON WHO IS UNLAWFULLY ARRESTED OR

DETAINED SHALL BE ENTITLED TO COMPENSATION AND PUBLIC APOLOGY FROM THE APPROPRIATE AUTHORITY OR PERSON; AND IN THIS SUBSECTION, "THE APPROPRIATE AUTHORITY OR PERSON" MEANS AN AUTHORITY OR PERSON SPECIFIED BY LAW." PER ADAMU JAURO, JCA (PP 16 - 18 PARAS E - A)

From the facts of the instant case, the Applicant was invited via a phone call to the Office of the Respondent to respond to a Petition. The Applicant like all well-meaning Nigerians showed courtesy by reporting at the Office of the Respondent on 15th March, 2022 and on the same day, the Applicant was served with bail conditions by the Respondent as shown in ***EXHIBIT EFCC 4.***

The question now is Whether the further stay in the custody of the Respondent by the Applicant till 17th March, 2022 who, having not met his bail conditions on the said date can be regarded as unlawful detention and an infringement of the Rights of the Applicant by the Respondent. To my mind, this is not so. In the case of ***MBAEYI V. EFCC & ORS (2022) LPELR-57515(CA)*** The Court held thus:-

"IT IS NOTEWORTHY TO STATE THAT THE APPELLANT NEVER CONTENDED THAT HE WAS NOT GRANTED BAIL. HE IN FACT CONFIRMED THAT HE WAS GRANTED ADMINISTRATIVE BAIL BUT ONLY CONTENDED THAT THE CONDITIONS IMPOSED ON HIM WERE STRINGENT. HAVING ADMITTED THAT HE WAS GRANTED ADMINISTRATIVE BAIL BY THE 1ST RESPONDENT, BUT FAILED TO MEET UP WITH THE BAIL CONDITIONS, COULD THE 1ST RESPONDENT BE HELD LIABLE TO THE APPELLANT FOR ANY PERCEIVED BREACH OF HIS

*FUNDAMENTAL HUMAN RIGHT UNDER THE PROVISION OF SECTION 35 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA. IN THE CASE AUTHORITIES **DANIEL VS EFCC (2016) LPELR-41173 (CA); CHINWOKO VS OKEKE-IGBOKWE & ORS (2018) LPELR-50894 (CA); NWAKAMA VS STATE OF LAGOS (2020) LPELR-50107 (CA), IT HELD THAT IT IS NOT THE RESPONSIBILITY OF THE 1ST RESPONDENT TO ASSIST THE APPELLANT TO MEET UP WITH HIS BAIL CONDITIONS.**" PER ADEBUKUNOLA ADEOTI IBIRONKE BANJOKO, JCA (PP 42 - 43 PARAGRAPH F - D)*

I am therefore constrained to accept the decision of the Court of Appeal above and discountenance the averments of the Applicant in light of the presence of **EXHIBIT EFCC 4** which shows that the Applicant was in fact granted bail timeously. The Applicant has failed to prove sufficiently before this Honourable Court how his rights as enshrined in the Constitution of our great Nation has been infringed upon by the Respondent. To this end, reliefs 1, 2 and 3 sought by the Applicant are lacking in merit and substance and have failed. Relief 4 as sought by the Applicant is incompetent and therefore fails accordingly. This application is dismissed in its entirety accordingly. I make no order as to costs. I would also add in this judgment that the main duty of the Court in this type of application properly brought before the Court is principally on the strength of affidavit evidence. I have seriously restricted my finding based on the affidavit evidence attached to the originating motion. The question is whether looking at the reliefs as reproduced in this judgment together with the

grounds on which the claim was brought it can be said that the breach of the fundamental right is the principal claim or main claim in the action before the Court. It is very clear to me there is no such at all as can be seen from the judgment of this Court aforesaid. This action as contained in the processes if at all exist cannot be brought under this procedure. See ***TUKUR VS GOVT OF GONGOLA State (1989) 4 NWLR (pt117).***

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)**

APPEARANCE

MUSA Yahaya:- For the Applicant

Chile Okoroma:- Appearing with C.Okongwu for the Respondent.