

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

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE:-21st NOVEMBER, 2022

FCT/HC/CV/1101/2021

BEWEEN:-

MR. GODIAN AMADI-----

CLAIMANT

AND

**1. FEDERAL REPUBLIC OF NIGERIA
2. INSPECTOR GENERAL OF POLICE
3. COMMISSIONER OF POLICE FCT AREA COMMAND
4. MR. WINSTON CHUKS OBIKWELU** } **DEFENDANTS**

JUDGMENT

This suit was filed by the Claimant on the 16th day of June 2021 vide a writ of summons, seeking for the following reliefs:-

1. A Declaration of this Honourable Court that the forceful abduction of the Claimant's daughter late Mrs. Emmanuella Obikwelu Nee-Amadi under the guise of marriage by Mrs. Chuks Obikwelu the Nigeria Police could not mitigate nor investigate on is arbitrary, repugnant to natural justice and unlawful
2. A Declaration of this Honourable Court that the refusal of the 3rd Defendant to investigate petitions written to it by the Claimant amounts to deliberate sabotage and breach of his right to fair hearing.

3. A Declaration of this Honourable Court that the said suit filed in malice by Mr. Chuks Obikwelu on the advice of the Defendants had exposed the Plaintiff to serious physical danger as a blind man denying him of getting political appointment in FCT which has caused him fortune.
4. A Declaration of this Honourable Court that the excessive conduct of the Defendants to the Plaintiff amounts to Gross misconduct of services, is a conduct unbecoming of a public servant and a discernible conduct of a public officer.
5. An Order of Mandamus directing the 2nd and 3rd defendants to investigate the petitions written and submitted to them by the Claimant.
6. An Order of this Honourable court compelling the 2nd Defendant to arrest and charge the 4th Defendant to court on the petitions written to the 2nd and 3rd Defendants.
7. An Order for award of the sum of N100,000,000.00(One Hundred Million Naira) as damages to the Plaintiff's person for exposing the Plaintiff to physical danger and serious health challenge he is passing through as a result of the defendant's gross misconduct against him.
8. A Declaration that the Plaintiff is entitled to compensation by way of award of general damages suffered and continued suffering by him when the defendants refused and neglected to investigate petitions he filed with them which caused the death of his daughter rather always investigate Mr. Chuks Obikwelu's numerous petitions.

A brief summary of the Claimant's case as can be gleaned from the statement of claim and witness statement on oath of the claimant is that the claimant had cause to write several petitions against the 4th Respondent to the Nigerian Police and other Agencies of the 1st Defendant. However, the said petitions were unattended to by the Police as well as the other agencies. On the contrary, the Police was

quick to arrest, detain and prosecute the Plaintiff and his late daughter based on a petition against them by the 4th Defendant. The Claimant averred that the court discharged and acquitted him and his late daughter, having found them not guilty of the allegations levelled against them by the Defendants.

On account of the above reasons, the Claimant felt that he had been discriminated against by the Police because of his disability status, being a blind man. He decried why his complaints were not investigated, whereas a complaint by the 4th Defendant against him was promptly attended to.

Upon commencement of this matter, the court ensured that adequate opportunity was given to the Defendants to put up a defence to the suit. On 11th November, 2021, the court granted an order for the 4th Defendant to be served via substituted means. Thereafter, the court ensured that several hearing notices were served on the defendants. However the Defendants failed to appear nor file any defence. Accordingly, on 31st January, 2022, the Claimant opened his case and counsel to the Claimant led PW1 (the Claimant himself) in evidence.

In the course of PW1 giving his evidence before this court the following exhibits were tendered and admitted in evidence and marked as follows:-

- a. Magistrate Court's Judgment Copy – Exhibit 1
- b. Copy of Petition captioned fraudulent conduct dated 14th September, 2015 – Exh. 2
- c. Letter to IGP dated 16/8/2017 – Exhibit 3
- d. Letter to Video Censors Board – Exhibit. 4
- e. Letter to Head of Service of the Federation – Exhibit. 5
- f. Copy of petition to Police, Kubwa dated 13th October, 2015 – Exh. 6
- g. Letter to the Police, FCT Area Command dated 23rd May, 2009 – Exh. 7
- h. Letter dated 1st September, 2020 – Exhibit 8

i. Letter dated July 2017 – Exhibit 9

The Defendants failed to appear or represented in court on the adjourned date for cross examination of witness, the court granted claimant's application for an Order of foreclosure of the defendants from cross-examining the PW1.

On the next adjourned date which was set aside for defence, none of the Defendants was in Court nor represented.

The Claimant filed his written address on 28th April, 2022, wherein learned counsel to the Claimant raised two issues for the court's determination:-

1. Whether in view of the evidence before this Honourable court, the claimant has sufficiently proved his case to be entitled to judgment.
2. Whether the defendants have been availed the principle of fair hearing.

On issue 1, learned counsel submitted on behalf of the Claimant that the Claimant has sufficiently proved his case, and that same having not been challenged or controverted in any manner whatsoever are credible.

On issue 2, counsel argued that the Defendants have been afforded ample opportunity to exercise their right to fair hearing, but they chose not to take the opportunity. ***KOTOYE V. CBN (1989) 1 NWLR (PT. 98) 419 @ 448.***

In conclusion, counsel urged the court to act on the unchallenged, uncontroverted and very credible evidence of the Claimant.

Having critically considered the facts and evidences presented by the claimant in this case, I am of the view that a single issue can assist the court in determining this suit to wit:-

“Whether by law and on the strength of evidences placed before this Honourable Court, the Claimant is entitled to the reliefs sought.”

It is already a trite position that in civil claims, the duty lies with the claimant to prove his case on the balance of probabilities or preponderance of evidence and this he must do by leading credible evidence in order to entitle him to the reliefs for which he approached the Court. The Court, at the close of evidence must holistically examine and weigh the evidence before it by placing same on an imaginary scale to see where it tilts or preponderates. See ***Yakubu vs. Janroyel (2005) ALL FWLR (Pt. 283) 1841 206***

It is equally instructive to note that the failure of the defendant to prove or his refusal to testify cannot alleviate the primary burden on the claimant - ***UMEOJIAKO VS EZENAMUO (1990) 1 NWLR (PT 126) 253, OGUNYADE VS OSUNKEYE (2007) 15 NWLR (PT 1057) 218, OYENEYIN VS AKINKUGBE (2010) 4 NWLR (PT.1184) 265.*** A claimant must show a prima facie case before the need to consider the defendant's case can arise. A party who fails to establish his case with credible and cogent evidence will have his case dismissed. Whether or not the Defendant testified after filing a defence or even where no defence is filed at all should not debar the Claimant, from proving his case.

It is settled law that the Claimant will not be allowed to rely on the weakness of the defence for his own case as he has the duty to prove his own case on the preponderance of evidence or the balance of probabilities, particularly as the Claimant in this case, is seeking declaratory reliefs. See ***SHERIFF V. MINISTER, FEDERAL MINISTRY OF EDUCATION (2022) LPELR-58707(CA).***

One of the major grouse of the Claimant is that the Police refusal to investigate and prosecute the 4th Defendant despite several petitions written against the 4th Respondent by him and his late daughter, is

unjust and unlawful. The claimant also wants this court to grant an Order of Mandamus directing the 2nd and 3rd defendants to investigate the petitions written and submitted to them by the Claimant. During examination in chief, the claimant tendered several petitions written to the Police through his solicitor. Evidence tendered by the claimant reveals that as far back as 23rd May, 2009, he had written through his solicitor Njimogu Chambers, to the Commissioner of Police, Command Headquarters, FCT, complaining the abduction, deceit, abuse, defilement and impregnation of Miss Emmanuella Amadi by the 4th Respondent. On 16th August 2017, he personally wrote to the Inspector General of Police, petitioning for the investigation of the 4th Defendants fraudulent and other illegal activities carried out by him from 2003 to April 2016 in the course of his employment. Again, on 13th October, 2015, a complaint was written by the Green Aid Solicitors (Kings Chambers) to the Area Commander, Kubwa Command Headquarters, on behalf of Emmanuela Obikwelu, complaining of malicious act and mischief against the 4th Defendants. The Claimant allege that all these petitions were not investigated by the Police.

The defendants did not file any defence or contradict the allegation that his petitions were not investigated.

Indeed, every citizen has a right or even a duty to report to the Police anyone suspected of committing a crime and the Police have a corresponding duty to investigate the report in the course of their statutory function of prevention, detection of crimes and generally preservation of law and order. In the case of ***FAJEMIROKUN VS COMMERCIAL BANK (CREDIT LYONNAIS) NIGERIA LIMITED (2009) 5 NWLR (PT. 1135) 558***, the Supreme Court held:

"Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report

is entirely the responsibility of the Police. The citizen cannot be held culpable for doing their duty unless it is shown that it is done mala fide."

See also ***Onah vs Okenwa (2010) 7 NWLR (Pt. 1194) 512*** where the Court held:

"Every person in Nigeria who feels an offence has been committed has a right to report to the Nigerian Police Force. Once that right of complaint to the Police who are custodians of order, in the society is exercised, the right shifts to the Police to exercise, their statutory powers under Section 4 of the Police Act. The power conferred on the Police under the Police Act includes, investigation, arrest, interrogation, search and detention of any suspect."

By Sections 214 and 215, of the Constitution and Section 4 of the Nigerian Police Act, 2020, the Police have the statutory responsibility to prevent, detect and investigate criminal allegations whether brought to their notice by individuals, person or persons, corporate bodies, institutions etc.

By Section 31 of the Nigerian Police Act, the Police are duty bound to investigate alleged crime brought to them and report their findings to the Attorney General of the Federation or of a state, as the case may be, for legal advice.

Also by Section 32(1) of the Police Act, "A suspect or defendant alleged or charged with committing offence established by an Act of the National Assembly or under any other laws shall be arrested, investigated and tried or dealt with according to the provisions of this Act, except otherwise provided under this Act".

The criminal investigative powers of the Police came under scrutiny *in* ***FAWEHINMI V. I.G.P. & 2 ORS (2002) 7 NWLR (PT. 767) PAGE***

606 AT 670-671 (F-A) where the Supreme Court summed up the investigative powers of the Police as follows:-

"The appellant is no doubt right in his argument that by virtue of the fact that section 214 (1) of the 1999 Constitution recognizes one Police Force for Nigeria and the said police are given a duty under section 4 of the Police Act (now in Cap. 359, Laws of the Federation of Nigeria, 1990) to prevent and detect crime, apprehend offenders, preserve law and order, protect life and property and enforce all laws and regulations with which they are directly charged, and that it is an important statutory duty which they owe to the generality of Nigerians and all other persons lawfully living within Nigeria. It follows that in their duty to detect crime, allegations of the crime committed by any person should normally be investigated by the Police."

Once a criminal allegation is made against a citizen, the Police have a constitutional and a statutory duty to investigate the allegations. This has been recognised over and again in our Courts in a plethora of cases, including the case of **AGBI VS OGBEH (2005) 8 NWLR (PT.926) 40, CHRISTLIEB PLC VS MAJEKODUNMI (2008) 16 NWLR (PT.1113) 324 and ONAH VS OKENWA (2010) 7 NWLR (PT.1194) 512.**

If after investigation, the Police found the complaint baseless or malicious, they have no duty to take a step further to prosecute. **U.A.C. of Nig Plc v. Prince O.O. Sobodu 2006 All FWLR pt 329, 877 at 893-894**

This however does not mean that the police do not have discretionary powers in the exercise of their functions. I think it will be a denigration of the aura of authority they represent and a disservice to

society to suggest that they can exercise no discretion in their duty of the maintenance of law and order, or, to be specific, in their investigation of any particular allegation of crime even if it were to be an obvious wild goose chase.

I am satisfied that in the performance of their duty to maintain law and order, to investigate allegations of crime and to arrest, the police have and can exercise some measure of discretion. It all depends on the circumstances of every occasion, the best of their capability, the image of the police force and the overall interest of the society. Where a crime has been reported, it is within the discretionary powers of the Police under Section 4 of the Police Act to decide whether or not to investigate such crime and to also decide on the strategy or manner in which they will conduct the investigation. ***FAWEHINMI v. I.G.P & ORS (2002) LPELR-1258(SC)***

Nevertheless, this discretion is not such that the court cannot make a compelling order in deserving cases, especially where there is no evidence contradicting the claims that the action of the Police in refusing to investigate is malicious and unjust.

Looking at the petitions which were written against the 4th Defendant, it was imperative for the Police to have investigated the complaints, but regrettably they did not do this. It is woeful if the Police is guilty of dereliction of their duties. This would amount to invitation of chaos in the society.

In the circumstances, it will be appropriate to order the 2nd and 3rd Defendants to perform their public duty of investigation. An Order is hereby made, mandating the 2nd and 3rd Defendant to investigate the petitions submitted by the Claimant, and report their findings to the Director of Public Prosecutions for advice within 14 days from today.

One of the most instructive reliefs sought by the Claimant in this case, is "a Declaration of this Honourable Court that the suit filed in malice

by Mr. ChuksObikwelu on the advice of the Defendants had exposed the Plaintiff to serious physical danger as a blind man denying him of getting political appointment in FCT which has caused him fortune.”

The Claimant during hearing tendered a copy of the Magistrate Court’s Judgment Copy – Exhibit 1, which was delivered on the 18th day of November 2019. Although the Claimant did not expressly plead the tort of malicious prosecution, it is clear from the relief sought and exhibit 1, that the Claimant desires a remedy from this court for an alleged malicious prosecution by 4th Defendant.

In law, a prosecution is said to be malicious and thus forming the basis of a claim in the tort of malicious prosecution when it is begun in malice without probable and reasonable cause to believe that the charges can be sustained. Malicious prosecution is thus an action for damages brought by a person against whom criminal prosecution has been instituted maliciously and without probable and reasonable cause, after termination of prosecution of such case in favour of the person claiming damages.

The Defendant in such an action must have put the law in motion as the one who took an active part in the initiation, continuation or procurement of the criminal proceeding against the Plaintiff and is thus subject to liability to the Plaintiff for wrongful criminal prosecution if:

A. He acts without probable and reasonable cause and has acted primarily for the purpose other than that of bringing an offender to justice.

B. The prosecution have terminated in favour of the Plaintiff against whom they were brought by the Defendant.

The four crucial elements of malicious prosecution, which are sine qua non for a successful claim of damages for malicious prosecution, are as follows:

1. That the Plaintiff was prosecuted by the Defendant.
2. That the prosecution was determined in favour of the Plaintiff.
3. That the prosecution was without reasonable and probable cause.
4. That the prosecution was as result of malice by the Defendant. See ***Chief Oyelakin Balogun V. Alhaji Busari Amubikahun (1989) 3 NWLR (Pt. 107) 381.***

To prosecute in this context, means to set in motion the law whereby an appeal is made to some person with judicial authority with regard to the matter in question and to be liable for malicious prosecution, a person must be actively instrumental in setting the law in motion. Merely giving information to the police is not enough; that at best may lead to an action for false imprisonment if the police act on the information and make an arrest and prosecute unsuccessfully.

It is also the law that once a wrongful prosecution has terminated (ended) in favour of the defendant, he or she is cloaked with the discretion to sue for tort of damages. See ***EROMOSELE V. WERMER & ORS (2014) LPELR 22183 CA.***

Now, while most of the other three elements are easily susceptible to interpretation by the Courts on the facts on each case, the element of malice has always been the most difficult to construe by the Courts, because of its often times subtle and latent nature not easy to discern on the face of the Defendant. It could easily be taken as akin to the "mens rea" or "mental element" of the tort of malicious prosecution.

The word 'Malice' is generally an emotive term, but in relation to the tort of malicious prosecution, it means that the criminal prosecution of the Plaintiff was instituted primarily by the Defendant because of a purpose other than that of bringing an offender to the justice he justly deserves. It is thus the intentional doing of a wrongful act without legal justification and may in most cases be inferred from the absence

of probable and reasonable cause. A note of caution, though, it does not necessarily mean and cannot necessarily be equated with hatred or ill will. See Blacks' Law Dictionary 8th Edition @ page 958. In the very old English case of **MITCHEL V. JERKINS 5 B.AD 588; CITED WITH APPROVAL IN CHIEF BALOGUN V. ALHAJIAMUBIKAHUN (1985) 3 NWLR (PT. 2)**; Parke J. had succinctly defined 'Malice' for the purposes of the tort of malicious prosecution thus:-

"The term 'malice' in this sort of action is not to be considered in the sense of hatred or spite against an individual, but of 'malus animus' and a denoting that the party is actuated by improper and indirect motives"

Due largely to the latent nature of malice, being operational in the mind of the Defendant as a mental element, it is important that trial Courts endeavour to give heed to the very proactive method of arriving at whether a Defendant was actuated by malice in laying the complaint leading to the prosecution of the Plaintiff as laid down by the Supreme Court over the years, a direction and a guide that has stood the test of time, in the celebrated case of **CHIEF BALOGUN V. ALHAJI AMUBIKAHUN (SUPRA)**, where Nnamani, JSC., (God bless his soul) had waxed thus:-

"Absence of reasonable and probable cause is usually evidence of malice... The malice required here to be absence of honest belief in the charge preferred against the Plaintiff.... Such belief must not merely be belief by the Prosecutor of the guilt of the person but it must be a belief that the Prosecutor will be able to adduce sufficient evidence before the Jury or the Court as would justify the Court in convicting the accused."

I have taken a critical look at Exhibit 1, and the offence for which the Claimant was prosecuted was an alleged defamation of the 4th Defendant's character. In that matter, the Claimant was accused of

defaming the character of the 4th Defendant by allegedly writing petitions against the 4th Defendant and accusing the 4th Defendants of being an informant of Boko Haram. At the conclusion of the trial, the court found the charges against the Claimant baseless and unsubstantiated. The court was not convinced that sufficient evidence had been placed before it to prove the allegation of defamation against the Claimant. The court categorically stated:-

"... The 1st defendant wrote to government institutions where he thinks that the nominal complainant can be called to answer to the allegations of fraudulent acts he made against the nominal complainant. Calling that a petition be investigated by the appropriate authority, can no stretch of imagination, be regarded as an unlawful act. Rather, it is the lawful thing to do".

The Claimant was accordingly discharged and acquitted.

Having gone through the findings of the magistrate Court in Exhibit 1, which judgment was not appealed against, I am convinced that the charge against the Claimant in that proceedings was unreasonable and improbable. It was actuated by malice. I so hold!

The 4th Defendant maliciously instigated the arrest and prosecution of the Claimant simply because the Claimant wrote petitions against him calling for investigations into alleged misconducts of the 4th Defendant, which unfortunately, were never investigated. To further prove the malicious intent of the 4th Defendant, he alleged that the Claimant accused him of being an informant of Boko Haram, however, there was no iota of evidence during trial, to support this allegation.

Having found that the prosecution of the Claimant in Suit No: CR/45/2017 before His Worship, Chukwuemeka Tony Ubani, of the Magistrate Court of FCT, Wuse Zone 2, which was instigated by the 4th Respondent was malicious, I hereby award general damages in the

sum of N10,000,000.00 against the 4th Defendant. The said damages must be paid within ninety (90) days from today. Reliefs 3 and 5 are also hereby granted, while reliefs 1, 2, 4, 6, 7 and 8 are refused, as the Claimant did not prove his entitlements to those relieves.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Iwuagwu Nnamdi:- Appearing with J.C Ejwu for the Claimant

David Ogunya:- For the 1st Defendant