

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

30TH DAY OF JANUARY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/285/2022

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

ANULI UMEGBORO APPLICANT
(Suing for herself for the enforcement
of her fundamental rights)

AND

1. MR. JOSEPH JOHN INYANG } RESPONDENTS
2. MR. PAUL BASSEY (Caretaker) }

JUDGMENT

The Applicant's application is brought pursuant to Sections 34, 37 and 42 of the 1999 Constitution and Order 11 Rules 1, 2, 3, 4 & 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

It prays the Court for the reliefs contained on the face of the Motion paper.

The application is accompanied by a Statement, the description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought, which are:

- (1) The Applicant is entitled to private family life without being subjected to any form of unlawful invasion of agents and privies of the Respondent.
- (2) The Respondents encroached into the Applicant's dwelling place without due process of law which amounts to a breach of fundamental right of the Applicant's private family life.
- (3) The taking off of the roof of the Applicant's dwelling place is not only excessive but amounts to torture and degrading, inhuman treatment.
- (4) The Respondent's life is put in danger.
- (5) That the Respondent decided to be lawless.

The Applicant's Affidavit evidence is to the effect that: Sometime in 2020, the landlord sold the property to the 1st Respondent who resides in Togo. That 1st Respondent notified her through his agent, the 2nd Respondent.

That she paid her yearly rent to the 1st Respondent up to 1st of January, 2021. That she was not issued with any receipt to that effect but 1st Respondent acknowledged receipt.

The transfer printout is Exhibit A. That she was issued with a Quit Notice through 1st Respondent's lawyer dated 29/06/2021 but it was not clear to her. That 2nd Respondent told her not to worry. The Notice is Exhibit B.

That she wanted to pay her yearly rent but 2nd Respondent told her to hang on until he gets clearance from 1st Respondent. That sometime in January 2022, 2nd Respondent informed her that the landlord did not want to renew her tenancy.

She informed the 2nd Respondent that she will pack out but needed some time to look for alternative accommodation. The 2nd Respondent refused, claiming the Quit Notice served on her last year sufficed. She

reminded him of his assurance that the Quit Notice was a mere formality. The 2nd Respondent was adamant.

That on 29/01/2022, the 1st Respondent instructed 2nd Respondent and he came with artisans to yank off the roofing sheets to endanger her life. It was done because she was a woman. Images of removed roof is Exhibit C.

That she has been receiving threats through phone to harm her. The Respondents have been using offensive words which are life threatening and have caused her emotional trauma. That she does not sleep at night for fear of being attacked.

That certain appliances in her house have been affected. That Respondents used excessive force and derogatory words on her. That the acts of the Respondents amounts to bullying and intimidation. That it is in the interest of justice to grant the application.

The Respondents' Counsel relies on the 2nd Respondent's Counter Affidavit sworn to by the 2nd Respondent dated 26/05/2022. He deposes that:

The 1st Respondent acquired the legitimate ownership of the premises called 10 Wisdom Estate, Lugbe, Abuja. That Applicant was inherited as a tenant and was allowed to stay the whole of June to December 2020 without payment of rent to enable her and other tenants find alternative accommodation.

Applicant complained of leaking roof. That 2nd Respondent promised to secure the permission of 1st Respondent to carry out repairs. The Whatsapp messages are Exhibit I.

That Applicant was served with a Six-Month Notice. That he did not bring artisans to the Applicant's flat but he remembered bringing a carpenter to do repairs on the roof at the instance of the Applicant.

The Applicant was not threatened or abused. That no appliances or property of the Applicant was affected or damaged as the repairs was carefully done. That there

was no use of force or derogatory words. The granting of the application will cause serious hardship.

Learned Counsel to the Applicant adopted his Written Address and posited an issue for determination which is: Whether based on the facts, the rights of the Applicant have been infringed upon by the Respondents necessitating the award of damages against the Respondent.

Learned Counsel canvasses that Courts are enjoined to defend and resist even these threats to infringe upon the right of a person. Refers to Section 34 of the 1999 Constitution. That the rights of the Applicant breached by the Respondents are those aptly captured and guaranteed by the Constitution.

That the condition precedent to invoke the jurisdiction of the Court for the enforcement of the rights or securing the enforcement is the main claim of the Applicant.

The Respondent's Counsel also adopted his Written Address and submits that consensual repairs carried out

in the Applicant's flat cannot amount to an unlawful invasion and encroachment.

Learned Counsel relies on the Whatsapp message. That Applicant is bound by the Whatsapp message. That Respondents' acts did not breach the Applicant's fundamental rights. That Applicant is still living in that flat. That the Applicant is not entitled to the reliefs sought.

I have read the Affidavit, Counter Affidavit and considered the Written Addresses of Counsel. The fundamental rights of the Applicant alleged to be breached are: Sections 34, 37 and 42 of the 1999 Constitution (as amended).

Section 46 of the 1999 Constitution and Order 11 Rule 1 state, *“Any person who alleges that any of the fundamental rights provided for in the Constitution or African Charter on Human and People's Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed*

may apply to the Court in the State where the infringement occurs or is likely to occur for redress.”

The rights which the Applicant alleges has been infringed are:

- (1) Section 34 of the 1999 Constitution, which states, *“Every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment.”*

- (2) Section 37 of the 1999 Constitution (as amended) states, *“The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.”*

- (3) Section 42 of the 1999 Constitution reads, *“A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person be subjected either expressly by or in the practical*

application of any law in force in Nigeria... to disabilities or restrictions to which a citizen of Nigeria of other communities, ethnic groups, place of origin, sex, religion or political opinion are not made subject to.”

The Applicant is a tenant to the Respondent. Her claim is that the roof of her house was removed by the Respondents with a view of ejecting her from the premises illegally.

The Respondents denied, insisting they brought a carpenter to effect repairs of a leaked roof complained of by the Applicant. That the Applicant is still in occupancy.

The photograph of the carpenter on top of the roof is availed the Court. The Respondents also availed the Court a copy of the Whatsapp conversation between him and the Applicant requesting earnestly for the repair of the leaking roof.

For an application alleging infringement of her fundamental rights to succeed, she must place before the Court all vital evidence regarding the infringement or breach of such rights.

It is only thereafter that the burden shifts to the Respondents. Where that has not been done or where scanty evidence as put in by the Applicant, the Court might strike out such application for being devoid of merit.

See FAJEMIROKUN vs. COMMERCIAL BANK (CREDIT LYONNAIS) NIG. LTD (2002) 10 NWLR (PT. 774) 593.

ONAGORUWA vs. I.G.P (1991) 5 NWLR (PT. 195) 593.

From the facts contained in the Applicant's Affidavit, it is clearly a case of trespass and damages. It is a tort and would have been pursued as such arising from the relationship of landlord and tenant.

However, the Applicant chose to bring her case under the Fundamental Right (Enforcement Procedure) Rules. There is scanty or no evidence as to how the repairs of the leaked roof or the removal of the roof with a view of ejecting her as a tenant lowers her reputation in the eyes of reasonable members of society.

It is an objective assessment of reasonable members of society. The action if true will only elicit empathy and support and not to lower her reputation. I also do not find evidence of how the Applicant was discriminated against as a woman by the Respondents or how the privacy of the Applicant was invaded. It is a concoction to evoke emotions and sentiments.

In the absence of evidence/scanty evidence, the application lacks merit. It is accordingly struck out.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
30/01/2023

Parties absent.

Cliford Eze, Esq. for the Respondent.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
30/01/2023