

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 21ST DAY OF MARCH, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/2865/2021
MOTION NO.:-FCT/HC/M/3040/2023

BETWEEN:

DR. FAIZA HARUNA MAITALA:.....APPLICANT

AND

**1. ASSOCIATION OF ASSOCIATED
ESTATE RESIDENTS, KARMO.**

2. MR. MICHAEL ACHIMUGU

:...RESPONDENTS

Uztaz Alhassan Sani for the Applicant.
Kelvin Amadi for all the Respondents.

JUDGMENT.

The Applicant brought this action against the Respondents for the enforcement of her fundamental rights, praying the Court for the following;

1. A declaration that the Applicant has the constitutional right not to belong to the 1st Respondent's association or any other association connected therewith.
2. An order of Court declaring the conducts of the 2nd Respondent together with his other executive members as oppressive, intimidating and repulsive to the Applicant's rights to dignity of her person and personal liberty as guaranteed and protected by Sections 34 & 35 of the 1999 Constitution of the F.R.N. (as amended).

3. A declaration that the Respondents lack the power to compel/force the Applicant or any Nigerian citizen to join the association.
4. An order of mandatory, prohibiting and/or perpetual injunctions restraining the Respondents or their agents/privies from further infringing on the fundamental human rights of the Applicant as contained in Sections 34 & 35 of the 1999 Constitution of the F.R.N. (as amended).
5. An order of this Honourable Court declaring the actions of the Respondents which detained and prevented the Applicant from exiting the premises of Associated Estate Impresit, Karmo, FCT-Abuja as unconstitutional, unlawful and a clear abuse of privilege and most condemnable.
6. An order of Court directing the Respondents to tender a written apology to the Applicant for the action which ridiculed, detained and prevented her from leaving the 1st Respondent premises as a result, suffered some injuries thereby, causing her embarrassments and loss by the actions of the Respondents.
7. An order directing the Respondents jointly and severally to pay to the Applicant, the sum of N2,000,000.00 (Two Million Naira) only as damages for the breach of her fundamental right.
8. And for such further or other orders as the honourable Court may deem fit to make in the circumstances of this case.

Stating her case in her supporting affidavit, the Applicant averred that on the 16th day of October, 2021 as she set out to go to her place of work, she suddenly saw some people going out of the Associated Estates, Karmo, and that when she got to the entrance/exit gate, she realized that it was locked and the 2nd Respondent, together with other members of the 1st

Respondent started spreading their chairs towards the passage, ostensibly to block her. The Applicant averred that the security man at the gate refused her request to open the gate to enable her get out to attend to her students, insisting that the 2nd Respondent had directed that the gate should not be opened for any reason. That she came out of her car to move the chairs away from the passage, but the 2nd Respondent and other members started shouting at her, pouring unnecessary insults on her and her person, with one Joseph, threatening to slap her.

She stated that the 2nd Respondent with other members of his association detained her from 8:30am to about 10am before she was allowed to exit the estate where she lives with her family after the 2nd Respondent and his team members had warned and threatened to deal with her severely if she ever dare to interrupt their meeting or any directive.

The Applicant stated that she is not a member of the 1st Respondent and that she does not wish to belong to the association. Also, that throughout the time she has so far spent in the said estate, she never received any correspondence from anybody pertaining to any association, and that she was not aware that the Respondents were having meeting at the particular time that she came to the gate to exit the estate to meet up with her official duties.

She averred that she could not attend to her official duties on time on the 16th day of October, 2021 as a result of the actions of the Respondents in locking the gate to the estate. That she was embarrassed and ridiculed by the 2nd Respondent and other members of the 1st Respondent, and that the insults thrown at her caused her some psychological trauma and emotional imbalance which kept her in a moment of depression.

In his written address in support of the application, learned Applicant's counsel, Ibrahim A. Bako, Esq, raised a sole issue for determination, to wit;

“Whether the Applicant has made a successful case for the breach of her fundamental rights by the Respondents?”

Proffering arguments on the issue so raised, learned counsel posited that the liberty of the individual is jealously guarded by the constitution, and that the exercise of arbitrary power is illegal. He referred to **Nkpa v. Nkume (2001)6 NWLR (Pt.710)543 at 549.**

He argued to the effect that the action of the Respondents in detaining the Applicant for over an hour, denying her exit simply because the association of the 1st Respondent, of which she is not a member, was having a meeting, has caused the Applicant personal loss. He referred to **Mohammed & Anor v. Olawunmi & Ors (1990)LPELR-1893(SC).**

Learned counsel contended that the Applicant, by virtue of the provisions of Section 40 of 1999 Constitution (as amended), cannot be compelled to belong to the 1st Respondent's association.

Arguing that the Court is empowered to award compensation for wrongful and illegal detention as provided for under Section 35(6) of the 1999 Constitution, he urged the Court to grant the Applicant's application and award damages against the Respondents for the flagrant breach of the Applicant's right as guaranteed under the constitution of the Federal Republic of Nigeria, 1999 (as amended) and African Charter of People's and Humans Right (Ratification and Enforcement) Act, Cap LFN, 1990.

In opposition to the Application, the Respondents filed a 33 paragraphs counter affidavit deposed to by the 2nd Respondent wherein they averred that all owners of properties in Associated Estates Karmo Road, Life Camp Extension, Abuja, including Mr. Jibrin Ibrahim Ila, the landlord of the Applicant, as Assignees, are bound by the Deed of Assignment respectively executed between them and Associated Nominees Limited (the Assignor).

The Respondents further averred that the Applicant as a resident of the estate, is bound by the terms of and conditions of the said Deed of Assignment which has existed and guided the affairs of the estate ever before the Applicant moved into the estate.

That based on the Deed of Assignment, all occupier of the estate, including the Applicant, have the obligation to pay for estate security services and other facilities enjoyed by them as a community.

They stated that notices of general meetings and payment of estate dues (which include that of security) are regularly printed, distributed at the gate or placed on the estate gate for the attention of the residents of the estate, including the Applicant. That despite being aware and having notice of the above obligations, the Applicant has blatantly refused and deliberately decided not to perform same even while enjoying the said estate security services and other facilities.

The Respondents averred that the General Meeting of the Estate agreed to meet on the 16th day of October, 2021, in the estate to discuss pressing issues including payment of security services and the general wellbeing of the estate, and that some members of the committee, including the 2nd Respondent, were delegated on the said 16th October, 2021 to politely intimate

and encourage the occupiers of the estate passing through the gate of the need to comply with the payment for the estate facilities.

The Respondents stated that they politely approached the Applicant who has been identified as one of the defaulters of the payments in the estate for a long time, to intimate her of the need to perform her obligations in the estate, but rather than give them audience, the Applicant claimed that she was rushing for an appointment and didn't have time for them, and then the Applicant drove through them to the gate.

They stated that since the Applicant was not ready to give them audience, even after all entreaties to oblige them few minutes, she was asked to open the gate of the estate herself and drive out without the aid of any of the estate security guard, since she has not been paying for such services. That the Applicant then became furious upon hearing that, and came out of her car to hurl insult on all of them at the estate gate.

The Respondents averred that none of the delegates of the estate committee present at the gate shouted at the Applicant or poured insults on her, and that none of them threatened to slap the Applicant. Furthermore, that none of the delegates of the estate committee is empowered to detain anybody and that the Applicant was never detained by them. That the Applicant only spent little time to argue with them, and that part of her time was spent explaining to persuade her to be more patient as estate security matters and other facilities are of paramount concern.

The Respondents further averred that their constitution does not compel membership and that nobody has compelled the Applicant to join the Association, but that the estate being a gated estate, services are paid for by all occupants.

The learned Respondents' counsel, Emmanuella Idele, Esq, in his written address in support of the counter affidavit, raised a lone issue for determination, to wit;

“Whether on the facts and materials before Court, the Applicant has established that her fundamental human rights were infringed by Respondents to entitle her to the reliefs sought?”

Arguing the issue so raised, learned counsel posited that a fundamental rights enforcement matter is a serious matter, and that the Court will not declare that an applicant's right is infringed simply because the applicant says so and in the absence of credible evidence or proof. That it must be established that the rights claimed exist and has been infringed upon or likely to be infringed. He referred to **Neka B.B.B. Manufacturing Co. Ltd v. ACB Ltd (2004)2 NWLR (PT.858)521 at 550-551.**

He argued that from the entire gamut of the Applicant's affidavit in support of her application, there is absolutely no evidence of such quality and cogency beyond controverted speculative averments showing that the Applicant's rights were violated as asserted by her.

Learned counsel posited that the Respondents in paragraph 5 and 6 of the counter affidavit deposed to the fact that the Applicant's landlord executed a Deed of Assignment. He argued that the said Deed of Assignment, which stipulates the obligations of the landlord to the estate, is binding on the Applicant as the tenant of the said landlord.

He argued that the assertion of the Applicant that she is aware of the existence of a committee/association in the estate as well as a whatsapp group, but that she was never invited to them,

and at the same time, that she does not know what is happening in the estate, especially notices of her obligation, amounts to blowing hot and cold air at the same time. That it is approbative, reprobative and amounts to a summersault, and that such conducts are legally abhorrent and unacceptable. He referred to **Osuji v. Ekeocha (2009)39 NSCQR pg 523 at 578.**

Learned counsel argued further, that the Applicant only made unsubstantiated allegations which have been vehemently controverted by the Respondents, and which cannot ground a finding of infractions of Human Rights. He submitted that the bare averments of infractions in an affidavit as in this case, cannot suffice especially where they are seriously controverted or challenged. He referred to **Igabele v. State (2006)6 NWLR (Pt. 975)100 at 119.**

Arguing further, he posited that the question of infringement of fundamental rights is largely a question of fact, and that the law remains trite that he who asserts must prove. He contended that the onus is thus on the Applicant who has prayed the Court for far reaching declaratory and other positive reliefs in this action, to place before the Court sufficient material facts required to sustain the reliefs claimed. He referred on this point, to **Onah v. Okenwa (2010)7 NWLR (Pt.1194)512 at 532.**

He urged the Court in conclusion, to hold that Section 34(1) and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), as well as order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 are inapplicable and do not avail the Applicant in this case.

By Order II (1) of the Fundamental Rights (Enforcement Procedure) Rules:

“Any person who alleges that any of the Fundamental Rights provided for in the constitution or African Charter on Human and Peoples’ 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:...”

It is clear from the above provision of the law, that what gives a person the locus to bring an action under the Fundamental Rights (Enforcement Procedure) Rules, is the breach or the likelihood of breach of any of the person’s Fundamental Rights as recognised by law. There must therefore, be the existence of a breach of a person’s fundamental human rights for an action under the Enforcement Procedure Rules to be properly founded.

In **Federal Republic of Nigeria & Ors v. Abacha & Ors (2014)LPELR-22355(CA)**, the Court of Appeal per Abiru, J.C.A, held thus;

“The Rules are specifically restricted only to actions on contravention of the provisions of chapter IV of the Constitution. It is only actions founded on a breach of fundamental rights guaranteed in the Constitution of the Federal Republic of Nigeria can be enforced under the Fundamental Rights (Enforcement Procedure) Rules, 1979 and where an applicant is unable to pigeon-hole his complaint within any of the guaranteed fundamental rights, the jurisdiction of the Court cannot be said to be properly invoked...”

From the depositions in the Applicant’s affidavit in support of this application, the only cognisable infraction of the Applicant’s

right disclosed therein, is the unauthorised restraint of the Applicant's movement by the Respondents.

The Respondents admitted that they were holding a meeting around the exit gate on the date alleged by the Applicant and that they stopped the Applicant in their bid to sensitize her on the need to pay her dues.

The pictorial evidence attached to their counter affidavit by the Respondents, clearly show the exit gate of the estate locked and some cars, obviously not only the Applicant's, were prevented from exiting the estate through the said gate.

In the circumstances, I do not believe the assertion of the Respondents that they merely asked the Applicant to come down from her car and open the gate by herself.

Both the Applicant and the Respondents are ad idem as to the fact that the Applicant is not a member of the 1st Respondent association. The Respondents also admitted that their association's constitution does not compel membership of the association.

The Applicant not being a member of the 1st Respondent association, cannot be compelled to participate in the affairs of the association.

The 1st Respondent evidently is a voluntary association open to willing or desirous residents of the estate in question. By law, only members of the association are bound by the rules and regulation of the association, including but not limited to the obligation to pay dues stipulated by the association.

The 1st Respondent, being an association, is not the manager of the estate, and therefore, has no legal grounds to impose

fees or some other obligations on the residents of the estate who are not members of the association.

The Respondents have argued that the Applicant's landlord is a signatory to the Deed of Assignment relating to the estate, and as such, that the Applicant is bound by the terms and conditions contained in the said Deed of Assignment. The said argument is grossly misconceived. However, it is not in doubt that the Applicant was a signatory to the Deed of Assignment as much as every other resident. All parties that signed the Deed of Assignment including the landlord are bound by the terms and conditions. The 1st Respondent is not a signatory to the said Deed of Assignment but an off shot of voluntary persons agreeing to associate, and as such, cannot enforce or compel compliance with the terms of the said Deed of Assignment.

The only parties that have right to implement the Deed of Assignment at its breach is the assignor and the assignee and not the 1st Respondent.

I therefore, agree with the Applicant, that the restraint of her movement by the Respondents under whatever guise, against her will, is a breach to her fundamental right to freedom of movement.

With specific reference to the reliefs sought by the Applicant in this application; the declaration sought by the Applicant in relief(1) can only be made in relation to the enforcement of the Applicant's right to freedom of association, specifically; right not to be forced or compelled to belong to an association against her will. In the length and breadth of the Applicant's affidavit she did not allege that the Respondents tried to or are about to compel her to join or belong to the 1st Respondent association.

More so, the Respondents averred that their constitution does not compel membership of their association.

It is therefore, my considered view that the declaration sought by the Applicant in her relief (1) is merely academic and fails because the Applicant was not compelled to belong to 1st Respondent association.

Relief (2) succeeds as to the extent of blocking her way a conduct of the Respondents as identified by the Applicant is, intimidating and repulsive to her rights to the dignity of her person.

The consideration of relief (3) is encapsulated in that of relief (1) and it fails.

Relief (4), succeeds.

I have made a finding in this judgment to the effect that the conduct of the Respondents in preventing the Applicant from leaving or exiting the estate on the particular day in issue, constituted a breach of the Applicant's fundamental right to freedom of movement. In the circumstances, reliefs 5-7 succeed.

From the totality of the foregoing, the Applicant's application succeeds partly and judgment is therefore entered for the Applicant as follows:

- A. Reliefs 1 and 3 fail and are dismissed having not been proved in the peculiar circumstances of this case.
- B. It is declared that the actions of the Respondents whereby they detained and prevented the Applicant from exiting the premises of Associated Estate Impresit, Karmo, FCT-Abuja, are unconstitutional, unlawful and most condemnable (Relief 5).

- C. The Respondents are ordered to tender a written apology to the Applicant for their action which ridiculed, detained and prevented her from leaving the 1st Respondent's premises as a result of which she suffered some injuries in the form of embarrassment and loss (Relief 6).
- D. The Respondents are ordered jointly and severally to pay to the Applicant the sum of N500,000.00 (Five Hundred Thousand Naira) as damages for the breach of her fundamental rights (Relief 7).

HON. JUSTICE A. O. OTALUKA
21/3/2023.