

**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:-7TH MARCH, 2023

FCT/HC/CV/2955/2022

BETWEEN

BASHIR MUHAMMAD KONTAGORA-----

APPLICANT

AND

- 1. INSPECTOR GENERAL OF POLICE**
 - 2. ASSISTANT INSPECTOR GENERAL OF POLICE**
 - 3. OFFICER DEBORAH**
 - 4. GALIKAWU**
- } RESPONDENTS

JUDGMENT

This Judgment is in respect of an Application for the Enforcement of the Fundamental Right of Mr. Bashir Muhammad Kontagora, the Applicant herein, brought by way of an Originating Motion filed on the 7th of September, 2022 together with supporting documents as prescribed by law and seeking the following reliefs to wit:-

- 1. A Declaration** that the arrest and continued detention of the Applicant by the 1st, 2nd and 3rd Respondents at the instance of the 4th Respondent using the instrument of the 1st Respondent on a purely domestic/commercial relationship allegedly entered by

the 4th Respondent with the Applicant is illegal, unconstitutional and ultra vires of the statutory duties of the 1st to 3rd Respondents under the Nigerian Laws.

2. **A Declaration** that the 1st to 3rd Respondents have no power to intervene in any manner whatsoever or to act as a debt collector for the 4th Respondent using the instruments of the 1st Respondent in attempting to settle a purely domestic/commercial relationship entered by Applicant and the 4th Respondent under the Nigerian Law.
3. **An Order** for the immediate release of the Applicant who has been in detention from the 7th day of June 2022 till date for it contravenes section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.
4. **An Order of Perpetual Injunction** restraining the Respondents by themselves or their agents, servants and/or privies or howsoever otherwise described from further arresting and detaining the Applicant after his release with a view to enforce the alleged claim of the 4th Respondent against the Applicant arising from a purely domestic/commercial relationship.
5. **An Order of Perpetual Injunction** restraining the Respondents whether by themselves or by their agents, servants, officers, privies or howsoever described from further interfering with the fundamental right of the Applicant in any manner whatsoever.

6. **An Order** of this Honourable Court granting the sum of ₦ 10,000,000.00 (Ten Million Naira) against the Respondents as general damages for the infringement of the Applicants rights as protected under chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, (Cap A9) LFN (2004).
7. And for Such Further and any Other Orders as this Honourable Court may deem fit to make in the circumstance.

The Originating Motion was supported by a Statement containing 3 grounds upon which the reliefs in the Application were sought, a 21 paragraphed Affidavit and a Written Address. The Applicant in his Written Address formulated 2 issues to wit:-

1. Whether the acts of the 1st – 3rd Respondents at the instance of the 4th Respondent in arresting the Applicant and proceeding to allege that the Applicant is indebted to the 4th Respondent is not a violation of the Applicant's fundamental right?
2. Whether it is the function of the Officers and men under the control of the 1st – 3rd Respondents to act as debt collector or recovery agents under Nigerian Laws?

The 1st, 2nd and 3rd Respondents though being aware of the proceedings neglected to file any Processes at all in the Matter. The 4th Respondent however filed a 5 paragraphed Counter-affidavit

with an Exhibit and a Written Address, wherein a sole issue for determination was formulated to wit

1. *“Whether the 4th Respondent has breached or is likely to breach the Applicant’s Fundamental Rights”.*

The Counsel to the Applicant based on the arguments contained in their Written Address argued that the arrest of the Applicant based on an allegation of his indebtedness to the 4th Respondent is a contravention of the provisions of **Section 46 of the Constitution**. Counsel to the Applicant went further to cite the provisions of **Section 8 (2) of the Administration of Criminal Justice Act (ACJA)** which provides that a suspect shall not be arrested merely on a civil wrong or breach of contract. The Applicant has further argued that it is not the duty of the Police to aid in debt recovery as **Section 4 of the Police Act 2020** clearly spells out the duties of the Police which does not include debt recovery. In this regard, the Applicant relied on the Case OF **IGWE & ORS V. EZEANOCHIE & ORS (2010) 7 NWLR (PT.1192)**.

On the other hand, the 4th Respondent has argued vide his Written Address that he has in no way breached or instigated a breach of the Applicant’s fundamental rights seeing that the facts contained in the Petition which he submitted to the 2nd Respondent is at variance with the facts which the Applicant has referenced vide his depositions contained in his Affidavit in support of the Originating Motion. The 4th Respondent further argued that the Case of

JAIYESIMI V. DARLINGTON (2022) 9 NWLR (PT 1838) 335 AT 367would immediately come to his aid as the Supreme Court held that an action to enforce the Fundamental right to freedom of movement will not succeed against an individual who merely gave information to the Police, who on their own initiative decided to effect the arrest of a viable suspect of a crime.

After a careful appraisal of the entire processes filed by parties and considering the circumstances of this Case, 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 THERE HAS BEEN A BREACH OF THE FUNDAMENTAL RIGHTS OF THE APPLICANT HEREIN BY THE RESPONDENTS”

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 the Police and other agencies of Government from carrying out their statutorily allocated duties as this will totally defeat the intendment of the law. The Applicant herein has deposed to the fact that from June 7, 2022 when he was arrested, he has remained in continued detention without the Respondents granting bail to him nor without the order of any Court of competent jurisdiction.

I find it very disturbing that the 1st to 3rd Respondents have detained the Applicant for as long as 9 months without either administratively granting him bail or taking him before a Court of competent jurisdiction to be prosecuted and have also neglected and or failed to file any Process in this Matter to even show cause as to why they have continued to detain the Applicant herein. I am therefore inclined to agree with the Applicant herein that he has been detained unlawfully by the 1st to 3rd Respondents as the constitution clearly stipulates what ought to be done once an arrest is made. Even though this Court will try at all cost not to interfere with the duties of the 1st to 3rd Respondents, the Court has a duty to ensure that in carrying out these duties, they act reasonably and within the confines of the law.

Therefore, an important sub-issue which this Honourable Court ought to resolve is *“whether the 1st to 3rd 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?"

. 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 AND WHERE THE COURT, AFTER EXAMINING THE REASON FOR THE ARREST AND FOR THE REQUEST FOR REMAND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 293 OF THE ACT, IS SATISFIED THAT THERE IS PROBABLE CAUSE TO REMAND THE SUSPECT PENDING ARRAIGNMENT OF THE SUSPECT BEFORE THE APPROPRIATE COURT, AS THE CASE MAY BE, MAY REMAND THE SUSPECT IN CUSTODY. THIS IS THE PURPORT OF SECTIONS 293 AND 294 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015. ?AS POINTED OUT EARLIER BY ME IN THE COURSE OF THE RESOLUTION OF THIS APPEAL THAT THIS ACTION IS CENTERED ON THE ENFORCEMENT OF THE FUNDAMENTAL RIGHT ACTION OF THE APPELLANT AND SAME HAS NOTHING TO DO WITH WHETHER THE APPELLANT COMMITTED THE OFFENCE FOR WHICH HE IS CHARGED WITH OR OTHERWISE. AS AT THE POINT OF THE APPELLANT'S ARREST AND DETENTION, HE ENJOYS THE PRESUMPTION OF INNOCENCE AS PROVIDED FOR UNDER SECTION 36 (5) OF THE CONSTITUTION (SUPRA), SO THEREFORE I DO NOT AGREE WITH THE

RESPONDENT WHEN IT STATED AT PARAGRAPH 4(F) OF THE COUNTER AFFIDAVIT THAT THE APPLICANT'S APPLICATION IS A MEANS TO FRUSTRATE HIS CRIMINAL PROSECUTION. THE POINT IS THAT WHETHER THE APPELLANT WOULD EVENTUALLY BE FOUND GUILTY OF THE OFFENCE CHARGED OR ACQUITTED OF SAME, THE FACT REMAINS IN THIS APPEAL THAT HIS DETENTION WAS BEYOND THAT STIPULATED UNDER SECTION 35 (4) AND (5) OF THE CONSTITUTION (SUPRA) WITHOUT A COURT ORDER AND IS ILLEGAL AND UNLAWFUL. I SHALL REFER TO ARTICLES 5 AND 6 THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (RATIFICATION AND ENFORCEMENT) ACT CAP. A9, 1983 WHICH CAME INTO EFFECT ON 17TH MARCH, 983. THE ARTICLES ARE COVERED IN MANDATORY TERMS AS FOLLOWS: ARTICLE 5 EVERY INDIVIDUAL SHALL HAVE THE RIGHT TO THE RESPECT OF THE DIGNITY INHERENT IN A HUMAN BEING AND TO THE RECOGNITION OF HIS LEGAL STATUS. ALL FORMS OF EXPLOITATION AND DEGRADATION OF MAN, PARTICULARLY SLAVERY, SLAVE TRADE, TORTURE, DUEL, INHUMAN OR DEGRADING PUNISHMENT AND TREATMENT SHALL BE PROHIBITED. ARTICLE 6 EVERY INDIVIDUAL SHALL HAVE THE RIGHT TO LIBERTY AND TO THE SECURITY OF HIS PERSON. NO ONE MAY BE DEPRIVED OF HIS FREEDOM EXCEPT FOR REASONS AND CONDITIONS PREVIOUSLY LAID DOWN BY LAW. IN PARTICULAR, NO ONE MAY BE ARBITRARILY ARRESTED OR DETAINED. (UNDERLINING MINE FOR EMPHASIS) THE AFRICAN CHARTER CONSTITUTES PART OF THE DOMESTIC LAWS OF NIGERIA. SEE **ABACHA VS. FAWEHINMI (2000) 4 S.C (PT 2) 1 AT 21.**

PART OF THE CHARTER PROVIDES AS FOLLOWS: "WHEREAS A CHARTER ENTITLED THE "AFRICAN CHARTER ON HUMAN AND PEOPLES, RIGHTS HAS BEEN DULY ADOPTED BY DIVERSE STATES IN AFRICA AND NIGERIA IS DESIROUS OF ADHERING TO THE SAID CHARTER. AND WHEREAS IT IS NECESSARY AND EXPEDIENT TO MAKE LEGISLATIVE PROVISION FOR THE ENFORCEMENT IN NIGERIA OF THE SAID CHARTER BY WAY OF AN ACT OF THE NATIONAL ASSEMBLY: 1. ENFORCEMENT OF PROVISIONS OF AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS. AS FROM THE COMMENCEMENT OF THIS ACT, THE PROVISIONS OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS WHICH ARE SET OUT IN THE SCHEDULE TO THIS ACT SHALL, SUBJECT AS THEREUNDER PROVIDED, HAVE FORCE OF LAW IN NIGERIA AND SHALL BE GIVEN FULL RECOGNITION AND EFFECT AND BE APPLIED BY ALL AUTHORITIES AND PERSONS EXERCISING LEGISLATIVE, EXECUTIVE OR JUDICIAL POWERS IN NIGERIA." THE LEARNED TRIAL JUDGE WAS BOUND TO TAKE JUDICIAL NOTICE OF THE CHARTER ALONGSIDE THE CONSTITUTION AND THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES IN THE DETERMINATION OF THE CONTROVERSY BETWEEN THE PARTIES. 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)"

On the strength of the foregoing Cases, and the facts of the extant Case, I am of the opinion that the 1st to 3rd Respondents have been unreasonable in the discharge of their duties and have indeed gone overboard and are in clear breach of *Section 35 of the Constitution* of Nigeria as regards the fundamental right of the Applicant herein having held him continuously in detention since the 7th day of June 2022 until now.

However, I am unable to connect the 4th Respondent to the actions of the 1st to 3rd Respondents, particularly as the 4th Respondent Petitioned the 2nd Respondent on a subject matter different from what the Applicant has alleged vide his depositions in his supporting Affidavit. The Petition submitted by the 4th Respondent against the Applicant relates to a Contract bothering on a Hilux 2016 Vehicle and same was received by the Office of the 2nd Respondent on August 2, 2022 as shown in the annexure marked Exhibit A in its Counter-affidavit whereas the Applicant has been in detention since June 7, 2022.

to this end,

reliefs' b and c sought by the Applicant as per the prayers contained in his Originating Motion are meritorious and therefore succeed. I order that the Applicant be charge to Court on or before 20th March, 2023 or be release forthwith from unlawful detention. Reliefs d and e sought by the Applicant are incompetent as this Court cannot prevent the 1st to 3rd Respondents from performing their lawful duties as the fundamental right of a citizen although safeguarded by the Constitution are not absolute. Furthermore, based on the success of reliefs b and c sought by the Applicant herein, I hereby grant punitive damages in the sum of NGN 1,000,000.00 (One Million Naira Only) against the 1st to 3rd Respondents jointly and severally in favour of the Applicant.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

APPEARANCE

A.Z Abdul:- For the Applicant

A.Z Abdul:- We are grateful for the judgment

A.S Moyosore:-For the 4th Respondent.