

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 23RD MARCH, 2023

SUIT NO: CV/2779/2022

BETWEEN

OHA CLIFFORD JOHN-----

APPLICANT

AND

- 1. THE ASSISTANT INSPECTOR
GENERAL OF POLICE ZONE 7**
- 2. SUPOL DAVID EHPRIEM**
- 3. CSP PHILIMON DANTIM**
- 4. POLICE SERVICE COMMISSION**
- 5. DENNIS ODOGWU**
- 6. INSPECTOR GENERAL OF POLICE**

RESPONDENTS

JUDGMENT

The Application was brought by the Applicant pursuant to order 11 Rule (1) (2) and (3) of the Fundamental Right Enforcement Rule 2009 section 34 (1) (a) and 35 (1) and 6 of the constitution of the Federal Republic of Nigeria 1999 as amended and under the inherent jurisdiction of the court. The prayers of the Applicant among others contained the following reliefs:-

1. A declaration that the arrest and detention of the Applicant by the 2nd and 3rd Respondent on the authority of the 1st respondent pursuant to a false complaint allegedly laid by the 5th Respondent on an issue already subject of litigation in suit No FCT/HC/CV/1943/22 filed by the 5th Respondent without any legal justification is unconstitutional, illegal and violate the fundamental right of the Applicant.
2. A declaration that the continuous threat to arrest and detain , intimidate and harassment of the Applicant by the Respondent or his privies, agents, servants, pursuant to a false complaint laid by the 5th Respondent on an issue already subject of litigation in suit No. FCT/HC/CV/1943/2022 filed by the 5th Respondent is unconstitutional illegal and in violation of the Applicant Fundamental Right as guarantee by the Constitution of the Federal Republic of Nigeria 1999 (as amended) .
3. An order of perpetual injunction restraining the respondent by himself and his agents privies, servants, howsoever called from any further unlawful harassment, intimidation, arrest and detention of the Applicant in relation to the complaint laid by the 5th Respondent.
4. An order of this Honourable Court directing the Respondent to pay the Applicant the sum of N500,000.00 as general damages for the breach of his fundamental right.
5. And for such further order others as this Honourable Court may deem fit to make in the circumstances.

In support of the application also contains the name of Respondent of the Applicant which equally contained same reliefs as stated above.

Grounds upon which the reliefs are sought namely

- a. The Applicant is a law abiding citizen of Nigeria doing business in Nigeria
- b. The Applicant is engaged in real Estate business where he sells serviced plots and development properties to interested clients
- c. The Applicant purchased plot ED 1809 within Sabon Lugbe East extension Layout with file Number MFCT/ZA/AMAC/SCE ED1809 from one Joss Global Limited over 10 years ago and have since then being in possession of the Plot actively.
- d. That the 5th Respondent is alleging that he is the legal owner of the said Plot.
- e. That the 5th Respondent made a claim to the Plot acclaim which was rebuffed by the Applicant as being untrue and illegitimate. The 5th Respondent filed an action against the Applicant with suit No FCT/HC/943/2022 before the High Court of the FCT Abuja sometime at Kuje.
- f. That the suit has been duly served on the Applicant and same has duly acknowledged the said service of the processes.
- g. The said 5th Respondent approached the Assistant Inspector General of Police Zone 7 with a complaint against the Applicant in relation to the Applicants claim to the ownership of Plot 1809, while the suit

referred to in paragraph (f) above had just been served.

- h. The 2nd and 3rd Respondent acting on the authority of the 1st Respondent invited the Applicant to the office on the 17th August, 2022 which the Applicant honoured on the 18th August, 2022 intimidated him and harassed him despite being told the issue was subjudiced at the instance of the complaint of the 5th Respondent.
- i. That the 2nd and 3rd Respondent told the Applicant that he must purchase the plot from the 5th Respondent they further agreed to release him on bail to his associates Mr. Okonkwo Ugochukwu on the condition that they return on Monday the 22nd August, 2022 with a proposal of a price at which they intend to repurchase from the 5th Respondent.
- j. That the officer of the 1st Respondent call the Applicant on phone on the 22nd August, 2022 to reiterate that if he fails to comply with the instruction reference in paragraph H and I above the Applicant will be arrested and detained

In support of the application is 18 paragraph affidavit deposed to by the Applicant. I must state in this judgment apart from the introductory part of the application and the introduction of the 1st, 2nd, 3rd and 6th Respondent which covered paragraph 1-6 all paragraphs as contained from paragraph 7-18 are substantially the same with the statement of fact as can be seen above. Therefore there is no need for same to be reproduced either partly or wholly unless where it becomes necessary

for such particulars paragraph to be reproduced. Counsel to the Applicant also filed a written address in support of the motion on notice.

In the said written address on behalf of the Applicant Counsel raised two issues for determination thus:-

1. Whether from the facts and circumstances of this case there has been or there is likely a breach of the Fundamental Right of the Applicant.
2. If issue (i) is in the affirmative whether the Applicant is entitled to the reliefs sought in this application.

In their argument in support of the above issues for determination affirmatively and emphatically ascertained that there has been a clear breach of the Fundamental right of the Applicant Counsel cited section 34 (1) of the 1999 Constitution which provides:-

Every individual is entitled to respect for the dignity of his person and accordingly

- a. No person shall be subjected to torture or to inhuman or degrading treatment, learned Counsel maintained that the Act of the 1st, 2nd 3rd and 5th Respondent above is degrading and very unreasonable given the circumstances enumerated in the affidavit deposed to by the Applicant's Counsel same also relied on the case of **MEMI VS A.G LAGOS STATE (1996) 6 NWLR (PT 452) 42**. That the Applicant has not been charged to any Court of law and has not been convicted and condemned by any Court. In his written address Counsel also referred the

Court to section 35 (1) of the 1999 Constitution which provides:-

- a. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure provided by law.
- b. In execution of the sentence or order of a Court in respect of a criminal offence which has been found guilty.
- c. By reason of his failure to comply with the order of a Court or in order to secure their fulfillment of any subject imposed upon him by law.
- d. For the purpose of bringing him before in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent him from committing a criminal offence.
- e. In case of a person who has not attained the age of 18 years for the purpose of his education and welfare
- f. In the case of a person suffering from infectious or contagious disease, person of unsound mind, person addicted to drugs or alcohol or vagrant for the purpose of their care or treatment or the protection of the community or
- g. For the purpose of preventing the unlawful entry of any person into Nigeria or of affecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking or proceedings relating thereto. Such right can only be curtailed under the circumstances provided in the subsection of section 35

(1) none of the circumstances provided above have arisen in this case to warrant the violation of the Fundamental right of the Applicant. Counsel went further to add that there is a due procedure of law for the investigation, arrest and detention of the subject which section 35 (1) contemplates but was not adhered to by the 1,2 and 3 Respondent section 35 (4) and (5) of the Constitution .

In the same written address Applicant's Counsel relied on section 43 of the 1999 constitution provides

Subject to the provisions of the constitution every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria such right cannot be truncated upon except in accordance with the dictates of section 44 of the constitution therefore the act of the 1st ,2nd and 3rd Respondent is aimed at depriving the Applicants right to own and acquire immovable property Counsel referred to paragraph 13,14,15,16 and 17 of the affidavit in support Counsel also referred the Court to the case of **MILITARY GOVERNOR OF LAGOS STATE & ANOR VS CHIEF EMEKAOJUKWU & ORS (1986) 1 (PT 18) 21 REGISTERED TRUSTEES APOSTLIC CHURCH VS OLOWOLERI (1990) 4 NWLR (PT 1580) 514-537**. Counsel to add weight in his written address asserted that the Court would not hesitate to invoke its discretionary powers to prevent its process from being used as a mere subterfuge see **OYEYEMI & ORS VS OWOEYE & ANOR (2012) LPELR (19695)CA A.G BENDEL VS A.G FED (1983) NWLR 208** . Drawing strength from the above authorities the 5th Respondent is already in Court in respect

of the above matter and as such cannot go to the police to settle such matter. Police power do not include setting of a civil dispute. Any private person who uses police to settle private dispute would in itself be liable for the wrongful act of the law see **AWGUIR & ORS VS ODUN & ORS (2016) LPELR 40214 CA.**

Counsel also referred the Court to the case of **FEDERATION VS BABANGIDA (2000) 2 NWLR 144 and 152 paragraph A.** where it was held that the detention of a citizen without a valid detention order is unlawful and a citizen will be entitled to a claim for damages for such unlawful detention. The action of the 1,2,3 and 5th respondent is an infringement of the Fundamental right of the Applicant see **AKITI VS PUNCH (2009) 11 NWLR (PT 1152) 261 EXADUKWA VS MADUKA (1997) 8 NWLR (PT 508) 635 AND ISA VS GAMANDI & ORS (2014) LPELR 22239.** Counsel urge the Court to so hold.

ISSUES TWO

Where there is a breach of a legal right there should be a remedy, Ubi Jus Ibi Remedium

In the case of **HARKA AIR SERVICES NIG. LTD VS KEAZON (2011) 12 (PT264) page 320 SC**

“ The award of general damages made by the Court of Appeal satisfy the directives of UBI Jus Ibi Remedium in my considered opinion. Where there is a proven legal right as in this case there should be a remedy. The Respondent who established a legal right should not be made to go away empty

handed” the Applicant is therefore entitled to a remedy against the breach see section 46 (1) of the constitution section 35 (6) of the 1999 constitution provides “ any person who is unlawfully arrested or detain shall be entitled to compensation and public apology from the appropriate authorities or person”

Counsel finally urge the Court to grant all the reliefs sought. On the other hand the 5th Respondent filed his counter affidavit through his Counsel same is of 14 paragraph deposed to by the 5th Respondent himself. Apart from the introductory part of the same 5th Respondent averred in paragraph 2 of his counter affidavit that paragraph 4,5,6,7,8,9,10,11,12,13,14,15,16,17,18 and 19 of the Applicant's affidavit in support of the motion on notice are false, in correct. They are at best self saving false incorrect and gold dogging. In paragraph 3 the 5th Respondent has also this to say that the sole purpose of instituting this suit by the Applicant is to evade the cause of justice and to use the Court to deny the 1st, 2nd ,3rd .4th and 6th Respondent from inviting and interrogating the Applicant with a view to prosecute him for his numerous criminal acts. Paragraph 4 that is contrary to paragraph 3 of the Applicants affidavit the 1st ,2nd,3rd,4th and 6th Respondent has power and constitutional right to invite and investigate the Applicant upon a reasonable complaint against him which he called intimidation and harassment paragraph 5 this suit constitutes and abuse of Courts process which the Applicant could have filed as the Respondent counter claim. The Applicant has no legal bases to implore and

move the Court to stop the 1st, 2nd, 3rd, 4th, and 6 Respondent from carrying out their constitutional duties paragraph 6 that neither the 5th Respondent nor the 1st, 2nd, 3rd, 4th and 6th Respondent has violated the Applicants fundamental Right. This suit of the Applicant is to waste the time of the Court.

Paragraph 7 that invitation, arrest and possible prosecution of the Applicant is the constitutional assignment of the Respondent. Paragraph 8 that the suit filed by the 5th Respondent on the same subject matter is not a bar to invitation/arrest detains and possible prosecution by the 1, 2, 3, 4, and 6 Respondent upon reasonable suspicion due to oral or written complaint by the 5th Respondent or any law abiding citizen of Nigeria. Paragraph 9 the 5th Respondent title to the subject property was verified and recertified by the FCTA. Paragraphs 10 Applicants document exhibited before the Court are none existent and unknown to the system of the issuing authority which has been investigated by the Respondent paragraph 11 no reasonable cause of action against the 5th Respondent brought before this Court paragraph 12 being the bone fide allottee and beneficial owner of the plot in question the 5th Respondent took physical possession and same has already commenced construction on the land. Paragraph 13 that the Court should be subsequently dismissed this case and a heavy cost be awarded against the 5th Respondent raised a sole issue for determination to wit:-

“Whether this Court has the jurisdiction to determine the instant suit.

Counsel on behalf of the 5th Respondent maintained that the instant suit does not disclose any reasonable cause of action particularly against the 5th Respondent. On what constitute a reasonable cause of action Counsel referred the Court to the case of **CHARACTER NIG LTD VS LONE STAR DRILLING NIG LTD (2007) LPELR SC**. Counsel further submits that the extant applicants application is incompetent as granting same will clash with the constitutional duties of the Respondent whose main duty is to maintain and prevent a breakdown of law and order . this suit does not disclose any cause of action in **R- BENKAY NIG LTD VS CADBURY NIG LTD (supra)** held when a Court processes is premised on frivolity or recklessness it becomes an abuse of Court process. Abuse of judicial process is defined in the case of **NV. SCHEEP VS MV.S. ARAZ (2000) 15 NWLR (PT 691) 622 OKAFOR VS A.G ANAMBRA STATE (1991) 6 NWLR (PT200) 659**. In the event that this Court hold that the instant suit no. FHC/ABJ/CS/ 2779/2022 in an abuse of Court process the proper order to make is an order dismissing the suit see **AFRICAN RE-CORP VS J.D.P CONST. (NIG) LTD (2003) 13 NWLR (PT 838) 609 NNAH GEORGE V SINCE (2002) LPELR 2726 SC**. This Court has no jurisdiction to hear and determine the instant human right enforcement suit. It is trite principles of law that jurisdiction is the life wire of adjudication without which the trial proceeding will be null and void see **JER & ANOR VS IYARTAR 2 ORS (2014) LPELR 23000 SC SHELIU & ANOR VS GOBALY (2009) LPELR 3043 (SC) AJAYI VS ADEBIYI (2012) 11 NWLR (PT 1310) Q 181 – 182 SC. SALIH & ANOR VS MOBOLAJI ORS (2013) LPELR 22019 SC FED H.A VS KALEJAYE (2010) LPELR 1267 SC**.

while on behalf of the 5th Respondent Counsel urge the Court to dismiss this suit having no reasonable cause of action and for being an abuse of Court processes and same urge the Court to grant their prayers and make an order as to cost. In Applicants reply to the 5th Respondent counter affidavit dated and filed on the 29th December, 2022 same is deposed to by the Applicant same contained 17 paragraph without reproducing same in the judgment I gave special consideration to paragraph 13-16 of the said reply which conclusively answered all the paragraph of the counter affidavit filed by the 5th Respondent in reaction to the applicant motion and the attached affidavit. In his written address Counsel on behalf of the Applicant raised a sole issue for determination to wit:-

Whether this Court has jurisdiction to determine this instant suit in so doing Counsel referred the Court to the following cases **SHANKYULA & ANOR VS ILRJIME (2004) LPELR 12598** counsel maintained that the Fundamental Right of the Applicant was truncated and by so doing this Court is the appropriate place to institute this action. See **AIYEDUN VS REGISTRAR UAC ILORIN & ORS (2016) LPELR 41186**.also in opposition to the 5th Respondent that this suit does not disclose reasonable cause of action same referred the Court to **RINCO CONSTRUCTION CO. LTD VS VEEPEE INDUSTRIES LTD & ANOR (2005) LPELR (2949)SC**.

Counsel also relied on **AGBOTI VS BALOGUN & ORS (2020) LPELR 49904 CA** that is to say is the originating process of the Applicant that is considered not that of the Respondent. In another development Counsel to the Applicant reechoed

his position by citing the case of **DSS & ORS VS AOGMIEL (2020) LPELR 50365 CA**. No section of the Police Act that gives the police power to violate the fundamental right of an innocent man see also **OKAFOR & ANOR VS AIG ZONE 11ONIKAN & 2ORS (2019) LPELR 46505 CA**. This is to show from the above cases that the 5th Respondent and others are all liable. On the whole Counsel urge the Court to discontinue the position and prayers of the 5th Respondent. From the affidavit evidence in support of the application filed by the Applicant has not in any way satisfy the requirement of section 34(2) (1) (a) and 35 (1) (1) and 6 of the constitution as contained in the application. Section 34 (1) (a) of the constitution contain prohibition of torture or inhuman, degrading treatment especially as the prohibition of torture inhuman and degrading treatment is not qualified in any way by any other section of the constitution. From the entire affidavit in support of the application the Applicant failed to state categorically for how long he was detained even the telephone conversation as stated in one of the paragraph of the affidavit the Applicant have not attached anything to convince the Court that there was such infringement of the Applicants fundamental right. The Applicant was only invited by the police It should be noted that this procedure of infringement is sue generis which essentially depends on affidavit evidence. The affidavit evidence must contain sufficient material fact in this case there is none. I have not seen anything that would warrant this Court to grant the reliefs sought by the Applicant. I therefore strongly hold where the affidavit evidence have not provides sufficient evidence, all the issue for

determination as contained in the written address automatically failed. While on the otherhand the 5th Respondent in his counter affidavit in opposition to the Applicant's application is misconceived the law. Fundamental Right action is sue generis the application filed by the Applicant Counsel does not in any way constitute on abuse of Court process at all. They are two different actions both in form and in substance. All the authorities relied on by the 5th Respondent are completely irrelevant to the case at hand there is nothing like abuse of judicial process. The Applicant has the right to file an application of enforcement of fundamental right even though there is a pending suit Court.

Where this issue failed all other issues raised in the written address for determination equally failed. I must state also in this judgment that the Applicant also failed to satisfy the requirement of section 35 (1) of the 1999 constitution.

I have no doubt in my mind that the duty of the Court of law is to determine cases properly brought before it in accordance with the laid down law. It is trite that the Court is not expected to patch a bad case in favour of any of the litigant that appear before the Court either by themselves personally or through their Counsel. It is only by adducing sufficient evidence in an affidavit from that the Court has the power to grant the reliefs sought. It is settled law that an action to be completely commenced and determined under the fundamental right procedure the main or principal claim therein must be enforcement or securing the enforcement of a fundamental right otherwise the

jurisdiction of the Court cannot be involved by the procedure see **EGBON VS B.R.T.C (1997) 12 NWLR (PT331) 20 TUKAR VS GOVT OF TARABA STATE (1997) 6 NWLR (PT510)545.**

The question is whether looking at the reliefs as reproduced in this judgment together with the grounds on which they are claimed it can be said that the Applicant have satisfied all the requirement to institute this action. The law on the point as well settled is that only action founded on a breach of any of the fundamental right guaranteed in the constitution with sufficient material evidence can be enforced under the relief otherwise the whole application would fail. I so hold. Consequently all the reliefs sought by the Applicant is hereby refused so also issues of cost asked by the 5th Respondent is equally refused. Parties to bear their respective cost. The Applicant was only invited to the 2nd, 3rd and 4th Respondent he deposed to that in his affidavit. He went further to deposed that he latter honoured the invitation. He ought to have categorically stated that he has been detain from so so period without a lawful Court order which he did not.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)

Appreance

Abdullahi kudu:- For the Applicant

Ibuoye Isaac:- For the 5th Respondent