

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT WUSE ZONE 2- ABUJA**

BEFORE HIS LORDSHIP HON.JUSTICE ELEOJO ENENCHE

SUIT NO. FCT/HC/CV/4841/22

DELIVERED ON 9TH JANUARY 2023

BETWEEN

TOYOSI AYODELE.....APPLICANT

AND

1. INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENSES COMMISSION (ICPC)
2. AKEEM LAWAL(Director Operations ICPC)
3. KABIR ELELU(Resident Anti-Corruption Commissioner)...RESPONDENTS

JUDGEMENT

By an Originating Motion filed on 18th November, 2022 and brought pursuant to ORDER 2 RULE 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Sections 34,35,39,41,44& 46(1) of the Constitution of the Federal Republic of Nigeria 1999(As Amended), the African Charter on Human & Peoples' rights ratification & Enforcement Act Cap A9 LFN 2011 and under the inherent jurisdiction of this Honorable Court , the Applicant prayed the court to grant the following reliefs;

1. AN ORDER of the honorable court enforcing and restoring to the Applicant his fundamental rights to personal liberty and freedom of movement.
2. A DECLARATION of this honorable court, that the civil business contract transaction of the Applicant and his company Reaprite Global Ltd with TeamApt Ltd, a limited liability company duly incorporated under the laws of the federal republic of Nigeria dated 24th October 2022, wherein the Applicant's company uses the online payment platform of TeamApt Ltd to receive online payment from its customers via transfers, USSD cards, direct debit quick response, agent locations, at an agreed transaction fee does not constitute a criminal offense under the corrupt practices & other related offenses Act, 2003 as to warrant the harassment, threat of arrest of the applicant by the respondents.

3. AN ORDER OF this honorable court restraining the 1st, 2nd and 3rd respondents acting at the behest of the 1st Respondent or by themselves, their privies and assigns, and any person acting through them by or under their authority, from arresting and/or detaining the Applicant upon honoring the Respondents' invitation letter dated 28 October 2022, pending the determination of the applicant's suit now pending before the Federal High Court, Abuja And releasing the Accounts of the Applicants as listed in paragraphs 12 of the affidavit in support .

The application was supported by a 19-paragraph affidavit deposed to by one Babatunde Saliu, a relation of the Applicant. The averments in the affidavit gave an account of the incident that led to the institution of this matter. The story is that, sometime in April 2015, the Applicant's company Reaprite Global Limited went into a consortium agreement with Hawksworth Advisors limited to provide an agricultural enablement by the Federal Government Anchor Borrower Scheme. The Applicant's company was to create an e- wallet for the beneficiaries of the scheme to facilitate the release of funds to vendors as directed by Hawksworth Advisors Limited. A copy of the said Consortium Agreement is annexed as Exhibit A.

In order for the agreement to be fully implemented, Applicant's company went into two agreements with TeamApt Limited firstly to use its Monnifyonline platform and also an Indemnity and Compliance Undertaken Agreement/Contract. Both are attached as Exhibits "C" and "D" respectively.

The Applicant averred in the affidavit that he had no problems in executing his duties under the contract with Hawksworth Advisors Ltd and TeamApt and also that the company did not engage in any untoward business nor fraudulent activities. It was averred that in spite of this, the Applicant was invited by the Respondents pursuant to investigations being carried out with respect to certain individuals and companies who had uploaded ghost and fictitious names into the scheme so as to fraudulently claim benefits from the Federal Government. Following the intervention of his counsel, the invitation extended to him was rescheduled to the 2nd week in February 2023 when he would have returned from a trip to the United Kingdom. It is instructive to note that he was already in the UK when the invitation was extended to him. It is to restrain the Respondents from arresting and detaining him and also to have his accounts unblocked that he has brought this application.

Having convinced myself from my records that the Respondents had adequate notice of the pendency of this matter on the 14th of December 2022 I conducted a plenary hearing where the application was formally moved by learned counsel for the Applicant Wilfred Eneye Esq. The Respondents despite notice stayed away from the proceedings and filed no processes either.

Learned counsel for the Applicant in his written address raised a single issue for the court's determination which is *whether the Applicant has made out a case for the grant of the reliefs sought in this application?*

In the argument, counsel submitted that that the constitution guarantees the rights of all citizens and as such, the Applicant has the locus to approach the court where those rights are breached or about to be breached. In support of this, counsel cited the provision of Sec. 46 of the 1999 constitution(as amended) . Counsel further submitted that the threat to arrest and continuous harassment of the Applicant by the Respondents amounts to an infringement of his human rights as guaranteed and protected by sections 34(1), 35(1) and 36 of the same constitution. Counsel noted that Section 34 of the ICPC Act does not permit arbitrary use of power by the Respondents as they have no reasonable grounds to invite the Applicant. On this premise, it was submitted that the invitation of the Applicant is illegal, unreasonable and in breach of the Applicant's right to personal liberty. To argue on this tangent learned counsel cited the case of **DOKUBO ASARI V. FRN (2007) VOL. 30 WRN 1 AT 38-40**. I was also called to note in the argument that the powers of the Respondents to delve into civil transactions is subject of a suit pending before the Federal High Court.

In all, I was urged to find that the affidavit evidence before me has sufficiently established a case of the contravention of the Applicant's rights as alleged.

Having had the privilege of considering the written submission of Applicant's learned counsel, I will pick out the items argued therein which I believe form the crux of the application being one for the enforcement of fundamental rights and then at the end make a pronouncement on the claims specifically. But before then, I will address one issue which is fundamental in all applications before a court and that is the issue of fair hearing.

To get here, I have convinced myself that the Respondents were duly served all the processes including hearing notices but they choose to stay away. The effect of this as I know it is that by the principle of *Audi Alteram Partem* I am only required to hear parties before me having afforded them the opportunity of being heard. Therefore, where a party as in this case had been given the opportunity of being heard in any matter before our Courts but such a party flagrantly throws away the opportunity of being heard by deliberately staying away without any excuse, the Court cannot be accused of violating the party's right to fair hearing in proceeding with the matter as the court cannot compel a party to file processes. It is trite that justice must be for all the parties before the court .see *ALHAJI AMINU IBRAHIM v. NIGERIA UNIVERSAL BANK LTD(2001) LPELR-6970(CA)*. See also *JAMES AREBE V. EFEIZOKOR & ORS (1993) 7 NWLR (PT.307) 588 AT 601* and *KADUNA TEXTILES LTD V. UMAR (1994) 1 NWLR (PT.319) 143 AT 159*. In circumstances such as this, where a party refuses to avail himself of the opportunity of being heard by a Court, such a party would be deemed to have waived his right to be heard in the matter and cannot be heard to

complain after words of any denial of fair hearing which he himself had refused to take and I so hold.

In spite of the above, in **NDCA & GASPA PROJECTS MANAGEMENT ENGINEERING LIMITED v. GASPA PROJECT MGT. GROUP LIMITED & ORS(2019) LPELR-47607(CA)** it was held that it is indeed the law that facts in an affidavit not challenged, contradicted or controverted by the opposing party are deemed admitted by him unless such facts on the face of it will lead to an absurdity if it is taken to be the truth of what is being sought to be established. In the absence of a counter-affidavit to an affidavit, the facts in the affidavit would generally be deemed unchallenged, undisputed and, in essence, admitted. Such admitted evidence requires no further proof. See also **ADEBOYE V BAJE (2016) LPELR-40578(CA) 36, PER OBASEKI-ADEJUMO, JCA; MAISAJE V HASSAN (2004) 11 NWLR (PT. 883) 181; EZEANAH V ATTAH (2004) 7 NWLR (PT. 873) 648.**

However, the Supreme Court in **OGOEJEFO V OGOEJEFO (2006) LPELR-2308(SC) 14**, per Mohammed, JSC held as follows : **"It is also the law that the unchallenged and uncontroverted facts deemed admitted in the affidavit must be capable of proving and supporting the case of the Appellant as the Applicant. In other words, the evidence contained in the unchallenged affidavit must be cogent and strong enough to sustain the case of the Applicant."** Going by the above, the absence of a counter

affidavit is not per se a free pass to Judgment. This is because it is not in all cases that a counter-affidavit is necessary to controvert facts in an affidavit. It was in fortification of this principle that, the Supreme Court in **OKOYE V CENTRE POINT MERCHANT BANK (2008) LPELR-2505(SC) 32-33** per Tobi, JSC, clarified the position as follows: **"I should also say that affidavit evidence is not sacrosanct. It is not above the evaluation of the Courts. Like oral evidence, a Court of law is entitled to evaluate affidavit evidence in order to ensure its veracity and/or authenticity. While un-contradicted affidavit evidence should be used by the Court, there are instances when such affidavit evidence clearly tell a lie and the Courts cannot be blind to such a lie. One example will suffice. If a party deposes to an affidavit that 1st of April every year is Nigeria's Independence Anniversary, a Court of law will certainly not accept such a deposition as true as the correct date is 1st of October.."**

In line with proper judicial tradition therefore, I must still X-ray the case as put forward by the Applicant though unchallenged to determine if truly as suggested by the lone issue framed, the Applicant has made out a case for the grant of the reliefs sought in this application.

Now, the grouse of the Applicant firstly as can be gleaned from the affidavit and the address of counsel is the invitation extended to him by the Respondents. He fears that he will be arrested and detained if and when he responds.

Section 5 (1) of the CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT 2000 provides for the powers of the officers of the commission. It reads that;

“Subject to the provisions of this Act, an officer of the Commission when investigating any matter which constitutes an offence under this Act, shall have all the powers and immunities of a police officer under the Police Act and any other laws conferring power on the Police, or empowering and protecting law enforcement agents.”

In defining the powers of the Respondents therefore, we have to make reference to the Police Act and as we know it, Section 214 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) recognizes one Police Force for Nigeria and the said Police are given powers under Section 4 of the Police Act 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. It goes without saying that the main powers of the Respondents is as contained in the Police Act as we can ascertain from the combined reading of Sec 5 (1) of the of the CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT 2000 and Section 4 of the Police Act.

As provided under Section 4 of the Police Act and by necessary extension sec 5 (1) of the Corrupt Practices Act the action if the Respondents can only be

faulted if Section 35 of the 1999 Constitution (as amended) is not complied with in carrying out their duties as it is beyond doubt that they have the powers to apprehend offenders. Section 35 of the 1999 Constitution (as amended) provides inter alia:

(1) 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 permitted by law –

(c) for the purpose of bringing him before a Court 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 his committing a criminal offence;

(2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he

understands) of the facts and grounds for his arrest or detention.

(4) 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 upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In Sub-section (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 kilometers, 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."

The allegation of the applicant is that he was invited by the Respondents and he fears he will be arrested. This is now an appropriate time to combine sections 5(1) of the Corrupt Practices Act, Section 4 of the Police Act and Section 35 of the 1999 constitution. I am of the view that the phraseology of Section 4 of the Police Act that officers have the duty 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 makes no equivocation on the fact that the Police and by extension the Respondents in this case can invite anyone suspected or alleged to have committed an offence and can for the purpose of further investigation arrest and detain such a person if need be.

As it has been held in a number of cases, Respondents herein drawing from the powers of the Police exercise very enormous powers and discretion in the performance of their duties, including the powers to arrest and detain or to prevent or detect crimes and to arraign offenders before the Court of law to answer to the allegation made against them. In this quest the Courts are always ready to encourage the Police and Respondents herein in the due performance of their constitutionally and lawfully guaranteed duties. It is for this and many other germane reasons that the Courts generally and this court in particular will be very cautious and almost reluctant to interfere unjustifiably and unnecessarily with the discharge of their functions. However, it must be pointed out at this point that these very enormous powers vested in the Respondents do not give them a **carte blanche** power or

as it were, a blank cheque to exercise it with impunity or in reckless disregard and in contravention of the laws of the land to infringe upon the inalienable fundamental rights of the citizens as constitutionally guaranteed. The standard of care expected of the Respondents in this case in the due discharge of their duty is an objective one as permitted by law in which case they must take specific cognizance of the constitution and the Administration of Criminal Justice Act (ACJA) 2015 especially as it pertains to arrest procedures and detention/ remand timelines . Thus, whenever the Respondents fail in their duty, and if the power of the Court is appropriately invoked, the Court would intervene to protect the inalienable fundamental rights of the Citizen against unwarranted breaches by them and indeed other law enforcement agencies. See **INSPECTOR GENERAL OF POLICE & ORS V. PETER O. IKPILA & ANOR (2015) LPELR - 40630 (CA) PER GEORGEWILL JCA**. See also **COP V. OBOLO (1989) 5 NWLR (PT. 120) 130.**

In this case my consideration of the affidavit points to one direction only which is that the Respondents only invited the Applicant and I am unable to see how a mere invitation by the Respondents would amount to a breach of the Applicant's fundamental rights. The facts in this case is that they invited the Applicant. I am of the view that additional to the powers under Sec 5(1) above, law enforcement agencies such as the ICPC do have powers to invite suspects in the course of investigation.

Sec 28(1) of the Corrupt Practices Act provides that “an officer of the commission investigating an offense under this act may-(a) order any person to attend before him for the purpose of being examined in relation to any matter which may, in his opinion, assist in the investigation of the offense.”

Sec 29(1) of the same Act provides that “the commission may issue a summons direct to a person complained against or any other person to attend before the commission for the purpose of being examined in relation to the complaint or in relation to any other matter which may aid or facilitate the investigation of the complaint; and the summons so issued shall state the substance of the complaint, and the time and place at which the inquiry is to be held”

See **WAHEED GBADAMOSI ELETU & 7ORS V ICPC & AGF FEDERATION (2015)**, where the court held that ICPC had a statutory duty to investigate allegations of corrupt practices made against any person or authority in Nigeria and that neither the claimants nor the court has the discretion to stop a statutory agency of government from performing its duties.

My view on this aspect of the sole issue raised is that the Respondents can invite, arrest and even detain but in strict compliance with the law. In this case, it will seem that it was only an invitation that has been so far sent to the Applicant. The Applicant whose counsel informed this court and the Respondents of his being abroad and is expected to be back in Nigeria

sometime in February 2023, filed this action to restrain the Respondents from arresting/detaining him upon arrival. On this score, it has been held on several occasions that the court lacks powers to issue injunctive reliefs with a view to impeding the result of investigation made under a statutory duty such as a law enforcement agency as the ICPC. Similarly, the court lacks the powers to restrain law enforcement agents by injunction from investigation of criminal complaints. What the Applicant has done is to cry “wolf!!!”, when there is none. As a responsible citizen who has asserted his innocence, the proper thing to do is to present himself upon his return to the commission while conversely, the commission as a responsible institution of government would hopefully deal with the Applicant in a professional and assured manner.

In view of the above, it will be a clear abuse of my judicial powers if I make any order at this time restraining the Respondents from carrying out their legitimate duty of law enforcement. If in the process of carrying out these functions, the right of the Applicant is violated, then of course, the court will be willing and able to provide the necessary redress but at this time making the orders sought will be far overreaching and I so hold

The second point raised in the prayers as amended is the freezing of the accounts of the Applicant. On this, while there is no right such as the right to own and operate a bank account, it is important to note that a person who runs an account owns the money in the account and money is considered as

property. Therefore, that person has an exclusive right over the monies because money is capable of being owned and a restriction over the use and control of such funds will invariably translate to a breach of the rights of such individual to own property which is constitutionally recognized. Sec 38(1) of the Constitution of the Federal Republic of Nigeria is clear in its pronouncement that no moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for purpose prescribed by law. Where a person has been deprived the use and enjoyment of monies in an account, that act in itself is an infringement on the person's right to own, use and dispose of property in a lawful manner and such an act is actionable as a breach of fundamental rights and I so hold.

While the Applicant has averred that his accounts were blocked and made inaccessible, that fact is not contested as the Respondents have not even filed any response to the claim. To this effect, the law is trite that non contested averments in an affidavit are deemed as admitted. The Respondent not having denied this allegation is deemed to have admitted having a hand in the freezing of the Applicant's bank accounts. In **Efoba Construction & Engineering Services Ltd v ICPC & Zenith Bank(2020)**, the Federal High Court(Coram Justice Peter Lifu)held that the Independent Corrupt Practice & other related offenses commission lacks the authority to place a Post No Debit on a bank account without a valid order. The judge held that restricting

the firm's access to the account in question without a court order amounted to gross and brazen violation of the Applicant's fundamental right to own, acquire and possess property.

In **GEONEL INTEGRATED SERVICE LTD V EFCC(2018) LPELR-44012 CA**, it was held that if bank accounts are to be investigated with any degree of success for the purpose of tracing criminality in transactions, how else can that be done without exercising some degree of control over the account in question? It stands to logic and common sense that any serious investigation of criminality in a bank account has to first and foremost start by taking control of the bank account itself or at least put some restraints on the account; anything short of that will be quixotic because funds in the accounts investigated will simply take flight but then a plethora of authorities by which I am bound suggest that such taking over of accounts must be by way of a valid court order.

SEE **POLARIS BANK LTD V YAYAMU GLOBAL SERVICES LTD(2022) LPELR-57376(CA)**, where it was held that for bank to freeze, place caution or any form of restraints on its customer's account, there must be a court order.

Unfortunately, I do not see any court order in this case and on this point unlike the first I find in favour of the Applicant that the placement of caution on the accounts of the Applicant which hinders the smooth running of his business is unlawful and a breach of the Applicant's fundamental rights.

Consequently, the case of the Applicant is successful in part and I hereby make an order directing the immediate unblocking of the Applicants accounts as itemized in paragraph 12 of the affidavit in support of this application as follows:

1. Reaprite Global LTD Acc no: 5400545535 Providus Bank
2. Reaprite Global LTD Acc no: 5400563243 Providus Bank
3. Toyosi Ayodele Acc no: 1005652113 Zenith Bank
4. Toyosi Ayodele Acc no: 7800739806 Providus Bank
5. Toyosi Ayodele Acc no: 0026043789 Stanbic IBTC
6. Toyosi Ayodele Acc no: 1408088052 Access Bank
7. Toyosi Ayodele Acc no: 0043126263 Stanbic IBTC Bank
8. Toyosi Ayodele Acc no: 3086588082 First Bank

ELEOJO ENENCHE

09/01/23

JUDGE

Counsel

For Applicant: Wilfred Eneye

Respondent: Not represented