

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI – F.C.T. – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

CLERK: CHARITY ONUZULIKE
COURT NO. 10

SUIT NO: FCT/HC/M/10524/2020
DATE: 11/5/2023

BETWEEN:

ENGR. NICHOLAS OGBEDO AZUKA..... CLAIMANT

AND

- | | | |
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| <ol style="list-style-type: none">1. HON. HARUNA MOHAMMED2. DIG MIKE AZIGBUE (DIG FCID)3. NIGERIA POLICE FORCE4. DSP FUMILAYO (PPRO TEAM LEADER)5. INSPECTOR ALABI (IPO)6. INSPECTOR ACHIBONG (IPO)7. INSPECTOR CHRISTOPHER (INTERPOL UNIT FCID)8. INSPECTOR MARGARET (PPRO UNIT FCID)9. INSPECTOR JONAH (PPRO UNIT FCID)10. SEARGENT MARTINS (IPO PPRO UNIT FCID)11. ALL 7 OFFICERS OF FCID UNIT PPRO | } | DEFENDANTS |
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JUDGMENT

The Applicant, Engr. Nicholas Ogbedo Azuka via a Motion for Enforcement of his Fundamental Human Right prays the Court for the following orders:

- (1) A Declaration that the arrest and detention of the Applicant by the Respondents on their accord by deliberately changing him from a Complainant in the case he brought before them to a suspect after recovering his money illegally taken from him by the 1st Respondent is a misnomer, a misinterpretation of facts particularly, where they are deliberately, undermining the fact that it was based on his complaint that led to the recovery of over **N3,000,000.00** (Three Million Naira) only on his behalf

before suddenly changing their plans and turning the Applicant into a suspect thereby violating the applicant's rights as guaranteed under **sections 35(1) and 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Articles II, III, IV, V and VI of the African Charter on Human and Peoples' Rights and Articles I, II, III, and VII of the Universal Declaration of Human Rights** and is therefore illegal and unconstitutional.

- (2) **AN ORDER** of this Honourable Court directing the Respondents, their agents, privies, servants and/or associates howsoever described to immediately without delay return the value of **N400,000.00** (Four Hundred Thousand Naira) only forcefully collected from the Applicant under the guise of taking their commission from the recovered monies of the Applicant as money as same is a violation of the rights of the Applicant to his property and therefore unconstitutional.
- (3) **AN ORDER** of this Honourable Court directing the Respondents, their agents, privies, servants and/or associates howsoever described to immediately without delay return all the monies of the Applicant recovered from the 1st Respondent amounting all together to N3,500,000.00 (Three Million, Five Hundred Thousand Naira) only which the 4th Respondent refused to release to the Applicant unless he will be willing to part with unconditional 10% thereby illegally retaining the Applicant's money to themselves.
- (4) **AN ORDER** of this Honourable Court directing the Respondents, their agents, privies, servants and/or associates howsoever described to desist forthwith from conducting any form of investigation as on the any case concerning the Applicant as their duty schedule as Police Public Relations Officers personnel does not cover criminal investigation; hence, should desist forthwith from disturbing the person or business interest of the Applicant or ever harassing, intimidating and or interfering with the liberty and dignity of the Applicant howsoever described.

- (5) **AN ORDER** of this Honourable Court directing the Respondents, their agents, privies, servants and/or associates howsoever described to immediately return all the personal items of the Applicant in their possession forcefully taken from him in the course of his detention at the facility of the 3rd Respondent.
- (6) **AN ORDER OF INJUNCTION** of this Honourable Court restraining the Respondents whether by themselves or by their officers, agents, servants, privies or otherwise forthwith from further intimidating, harassing or in any manner infringing on the fundamental rights of the Applicant in any manner howsoever.
- (7) **AN AWARD OF N50,000,000.00 (Fifty Million Naira)** only damages for the unlawful and unconstitutional violation of the Applicant's rights by threatening to keep her perpetually in detention without trial.
- (8) **AND ANY OTHER ORDER(S)** as this Honourable Court may deem fit to make in the circumstances of this case.

The application is dated 22/9/2020. In support is an affidavit of 33 paragraphs deposed to by the Applicant himself, statement of facts, Reliefs sought, grounds upon which the reliefs are sought and a written address. All are dated 22/9/2020.

Also filed is a further affidavit sworn to by the applicant. It is dated 15/06/2022 and is of 34-paragraphs along with another written address.

The grounds upon which the Reliefs are sought are as follows:

- (1) The Applicant is entitled to the enjoyment of the fundamental human rights as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended) relating to the liberty of his person, equal protection of the law and the dignity of his human person.
- (2) Upon a clear violation of any or all of the aforesaid rights accruing to the Applicant by anybody or authority, the

Applicant shall be entitled to redress in a competent Court of law such as this.

- (3) The Applicant has been grossly maltreated and humiliated by the Respondents who are dealing with the Applicant as if he has committed an offence by approaching a Court to issue a direct Complaint to the Police to investigate his grievances against the 1st Respondent.
- (4) The Respondents are in clear violation of the Applicant's rights.

The learned Counsel to the applicant adopted all the arguments canvassed along with the attached documents in urging the Court to grant his application. He adumbrated in Court that the crux of the matter is intimidation and harassment of the Applicant by the Police. He prayed the Court to grant their reliefs in toto.

Upon service of this application on the 1st Respondent, he filed a counter-affidavit of 37-paragraphs with 4 Exhibits attached marked as AA1 – AA4. It was filed on 15/01/2021 but deemed properly filed on 23/6/2022. The learned Counsel to the 1st Respondent placed heavy reliance on all the averment and Exhibits attached thereto in opposition to the grant of this application.

He said in further compliance with Fundamental Rights (Enforcement Procedure) Rules, he filed a written address. He adopted all the written arguments and urged the Court to dismiss this application as it affects the 1st Respondent and award the 1st Respondent N1,000,000.00 (One Million Naira) cost for dragging him to Court for no just cause.

On the part of 3rd – 10th Respondents they filed a counter-affidavit of 27 paragraphs deposed to by Alabi Babatunde, the 5th Respondent with the annexure attached NPF 01 – NPF 08 respectively.

The learned Counsel relied on the paragraphs of the counter-affidavit and annexures. He placed emphasis on annexure NPF 07 which is warrant of arrest of the Applicant issued by Area Court Gudu for the Arrest of the Applicant following investigation and proceedings of the Court.

He submitted that a careful look at the complaint against the Police by the Applicant to the Police Service Commission, Human Rights Commission and so on shows the Police were after the applicant. In support also is a written address dated and filed 19/4/22 which is deemed properly filed on 23/6/22. He adopted the written submission as their arguments and urged the Court to dismiss this application.

He further argued that the fact that the applicant was arrested on 25/8/2020 and arraigned before a Court on 26/8/2020 was not challenged in the applicant's further affidavit.

He finally urged the Court to dismiss this application and award substantial cost against the applicant in favour of 3rd – 10th Respondents.

I have considered the arguments and submissions of both Applicant and all the Respondents for and against the grant of this enforcement of human rights application.

I think it is necessary to briefly narrate the facts that led to this application.

The Applicant entered into contract of sale of land with the 1st Respondent and parted with certain amount of money only to discover that the 1st Respondent is not the owner of the land. And that was in 2016. He gave him N5,300,000.00 (Five Million, Three Hundred Thousand Naira) only which was paid to 1st Respondent's Company account with the name Tawaje Nigeria Ltd domiciled with Diamond Bank Plc with account number: 0087803432. And another N400,000 collected cash by the 1st Respondent from the Applicant under the guise that he will use it to beacon the land.

When the Applicant realised the 1st Respondent was not the owner he demanded for refund of his money and the 1st Respondent was dodging him and refused to pick his call. He was prompted to send a criminal complaint against the 1st Respondent to the Upper Area Court Gudu and the Court directed the Deputy Commissioner of Police Force Criminal Investigation Department at the Force Headquarters Area 10 to investigate the matter in a letter dated 17th October, 2019.

See paragraphs 2 – 5 of the supporting affidavit. See also paragraph 8, 9, 14, 22, 23, 26 and 28 of the 1st Respondent's counter-claim. Also, see paragraph 12 of the 3rd – 10th Respondents' counter-affidavit.

Both learned Counsel for the Applicant and 3rd – 10th Respondent formulated issues for determination.

As for the Applicant, he formulated two issues for determination. They are:

- (a) ***Whether going by the annexed exhibits to the Motion on Notice and the further affidavit of the Applicant, the Applicant has not proved his case against the Respondents as having violated his fundamental rights?***
- (b) ***Whether such violation is redressable?***

As for the 3rd – 10th Respondent, the Counsel formulated one issue to wit:

“Whether the Applicant has proved any violation or likely violation of his human rights by any of the 3rd – 10th Respondents to entitle him to any of the Reliefs sought against them?”

I have gone through all the depositions of the Applicant and 3rd – 10th Respondents. Also, I have perused and examined all their legal arguments and submissions as well as the documents attached. They are all incorporated in this judgment.

However, the only and sole question that is germane is whether the Rights of the Applicant have been violated or not. I want to answer in the positive. For a citizen to file a case in a Court against another citizen and the Court ordered the Police to investigate only for the Police to turn the table round and said that the Complainant is a criminal in a case of sale of land which the 1st Respondent that received the money did not deny.

All that is expected is to collect the money obtained by the 1st Respondent and remit it back to the Applicant and the case would

close or probably report to the Court that it is true that money exchanged hand and here is the whole money recovered from the 1st Respondent.

In the case of **EMODI VS. REGISTERED TRUSTEES OF ASABA SPORTS CLUB & 15 ORS. (2021)**, where it was held thus:

“The question of infringement of Fundamental rights is largely a question of fact and does not so much depend on dexterous submission of Counsel on law. So it is the facts as disclosed by the affidavit evidence that is usually examined, analysed and evaluated to see if the fundamental rights have been eviscerated as claimed.”

See **EBO & ANOR VS. OKEKE & ANOR (2019) LPELR – 48090 (CA)**.

The Appellate Court further held as follows:

“It is trite that where an Applicant shows that his fundamental right was breached or to be breached, the burden moves to the Respondent to show justification, that their acts were lawful.” See **BABA VS. ODIMEGWU & ORS. (2019) LPELR – 48105 (CA); AGBAKOBA VS. SSS (1994) NWLR (PT. 351) 475; OHANEDUM & ORS. VS. COP IMO STATE & ORS. (2015) LPELR – 24318 (CA)**.

As I said above that, the 3rd – 10th Respondents ought to have handed the money recovered from the 1st Respondent to the Applicant without removing any dime from it.

It could not be a defence in law that part of the money was given to somebody that has a complaint against the Applicant and I so hold. See the case of (**Emodi**) supra. The Applicant therefore has proved that his fundamental right to property has been violated by the 3rd – 10th Respondent when they insisted that the money recovered by them from 1st Respondent will not be remitted to the Applicant and I so hold.

For the above reasons, it is hereby held as follows:

- (1) A Declaration that the arrest and detention of the Applicant by the Respondents on their accord by deliberately changing him from a Complainant in the case he brought before them to a suspect after recovering his money illegally taken from him by the 1st Respondent is a misnomer, a misinterpretation of facts particularly, where they are deliberately, undermining the fact that it was based on his complaint that led to the recovery of over **N3,000,000.00** (Three Million Naira) only on his behalf before suddenly changing their plans and turning the Applicant into a suspect thereby violating the applicant's rights as guaranteed under **sections 35(1) and 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Articles II, III, IV, V and VI of the African Charter on Human and Peoples' Rights and Articles I, II, III, and VII of the Universal Declaration of Human Rights** and is therefore illegal and unconstitutional is hereby held.
- (2) **AN ORDER** of this Honourable Court directing the Respondents, their agents, privies, servants and/or associates howsoever described to immediately without delay return the value of **N400,000.00** (Four Hundred Thousand Naira) only forcefully collected from the Applicant under the guise of taking their commission from the recovered monies of the Applicant as money as same is a violation of the rights of the Applicant to his property and therefore unconstitutional is hereby granted.
- (3) **AN ORDER** of this Honourable Court directing the Respondents, their agents, privies, servants and/or associates howsoever described to immediately without delay return all the monies of the Applicant recovered from the 1st Respondent amounting all together to **N3,500,000.00** (Three Million, Five Hundred Thousand Naira) only which the 4th Respondent refused to release to the Applicant unless he will be willing to part with unconditional 10% thereby illegally retaining the Applicant's money to themselves is hereby granted.

- (4) **AN ORDER** of this Honourable Court directing the Respondents, their agents, privies, servants and/or associates howsoever described to immediately return all the personal items of the Applicant in their possession forcefully taken from him in the course of his detention at the facility of the 3rd Respondent is hereby granted.
- (5) **AN ORDER OF INJUNCTION** of this Honourable Court restraining the Respondents whether by themselves or by their officers, agents, servants, privies or otherwise forthwith from further intimidating, harassing or in any manner infringing on the fundamental rights of the Applicant in any manner howsoever is hereby granted.

That is the Judgment of this Court.

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S. B. Belgore
(Judge) 11/5/2023