

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 26TH DAY OF APRIL, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/146/23

BETWEEN:

HASHIMU YAHAYA:.....APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE 2. COMMISSIONER OF POLICE 3. D.P.O. CENTRAL POLICE DIVISION 4. D.C.O. CENTRAL POLICE DIVISION 5. I.P.O LUKA DIMAS 6. BASHIR MOHAMMED	}	:....RESPONDENTS
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Abubakar Maigari for the Applicant.
Dalyop Siman for the 1st and 2nd Respondents.
Other Respondents absent.

JUDGMENT.

The Applicant brought this fundamental Right Enforcement application against the Respondents vide a Motion on Notice dated 13th February, 2023 and filed the 16th day of February, 2023 wherein he claims for the following:

1. An order of this honourable Court restraining the 1st to 5th Respondents from intimidating, harassing, embarrassing or detaining the Applicant or by any restriction infringe on the Applicant's right to life and liberty.
2. An order restraining the Respondents, particularly the 3rd – 5th Respondents from harassing, preventing, intimidating,

arresting, embarrassing and detaining the Applicant in any form of Police detention at all material time in respect of Toyota Hilux that has been seized as forfeited to the board on account of a contravention of the Nigeria Customs Service Act No. 56 of 1958 (Contravention of Import Prohibition Order) instigated by the 6th Respondent.

3. An order of this honourable Court directing the Respondents to pay the sum of N2,000,000.00 (Two Million Naira) only each to the Applicant as punitive and exemplary damages for the forceful arrest and detention of the Applicant and denying the Applicant rights to liberty and freedom of movement and to refrain from entertaining matters outside their jurisdiction.
4. An order restraining the Respondents, their agents, officers, representative, from further arresting, harassing, inviting and embarrassing or in any way intimidating the Applicant and allowing the Applicant to do his business in respect of this matter/suit before the Court.
5. The sum of N1,000,000.00 (One Million Naira) only each being the cost of instituting this action.
6. And for such further order or other orders as this Court may deem fit to make in the circumstance of this case.

The Applicant in his affidavit in support of the Motion on Notice averred that on 22nd day of December, 2022, the 6th Respondent reported him to Central Police Station in respect of his Toyota Hilux imported without custom duty which has been seized and forfeited to the “board” on account of a contravention of the Nigeria Custom Service Act No.56 of 1958 (Contravention of Import Prohibition Order).

He stated that the 3rd, 4th and 5th Respondents connived with the 6th Respondent to arrest him, and further threatened to take his statement with duress to pay for the said Toyota Hilux which

has been seized and forfeited to the “board”. That the 3rd – 6th Respondents threatened to make sure that he is dealt with.

The Applicant averred that he has suffered series of humiliation, emotional torture and harassment from the officers of the 1st, 2nd, 3rd and 4th Respondents as a result of intimidation and false information given to the 6th Respondent. Also, that his family has suffered untold hardship as a result of intimidation, unfounded allegation of fraud and breach of trust without evidence, harassment, arrest, detention and his humiliation by the Respondents.

The learned Applicant’s counsel, Abubakar A. Maigari, Esq, in his written address in support of the Motion on Notice, raised a sole issue for determination, namely;

“Whether from the totality of facts and evidence placed before this honourable Court by the Applicant, the Respondents has (sic) grossly infringed upon the Applicant’s fundamental human rights as guaranteed under chapter IV of the 1999 Constitution-Federal Republic of Nigeria (as amended) entitling him to the reliefs sought in this application?”

Proffering arguments on the issue so raised, learned counsel submitted that the right to dignity of human person, personal liberty and freedom of movement under Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), are sacrosanct, and as such, ought to be respected, preserved and safeguarded by all individuals and institutions of Government alike.

He argued that the combined effect of the provisions of Section 46(1) of the Constitution and Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, is

that where a person's right has been contravened or is likely to be contravened, he may approach the High Court of the State or Federal High Court for the enforcement of his fundamental rights.

He referred to **A.G. Federation v. Kashamu No. 1 (2020)3NWLR (Pt.1711)209 at 274** and contended that the facts contained in the Applicant's affidavit show a clear case of breach of the express provisions of the constitution, and that the Applicant is entitled to seek redress for the said breach/infringement of his right.

Relying on **Jim-jaja v. C.O.P. Rivers State (2013)22 WRN 39 at 56**, learned counsel submitted that it is settled law that where, as in the instant case, a violation of the rights of an applicant is established, damages in form of compensation naturally flow therefrom as a matter of course.

He urged the Court in conclusion, to resolve the sole issue formulated by the Applicant in his favour and to consequently grant all the reliefs sought by the Applicant.

The 1st – 6th Respondents were all duly served with the Motion on Notice and hearing notices in this case but they neither filed counter affidavits nor entered appearance to defend the suit.

The law is however settled that the burden of proof is on the party who asserts or who will fail if no evidence is led on an issue, and in civil cases, the onus of proof rests squarely on the Claimant. See **Agbaje v. Fashola (2008)6 NWLR (Pt.1082)92 at 141**.

The absence of defence or counter affidavits by the Respondents does not absolve the Applicant of the duty to establish his claims with credible evidence.

It is only when the Applicant has, by credible evidence established his claim of infringement of his fundamental rights that the onus can shift to the Respondents to prove the contrary or justify the alleged infringement of the Applicant's fundamental rights.

Going through the Applicant's affidavit in support of this application, what is discernible from the Applicant's averments is that he was arrested on the basis of the 6th Respondent's report, by the 3rd, 4th and 5th Respondents who threatened to take his statement under duress, and that the 3rd – 6th Respondents have been threatening the Applicant that they will make sure that he will be dealt with.

The Applicant did not state when, and how long he was detained by the Respondents or how or in what manner or form he was threatened by the Respondents.

What is more? That Applicant exhibited documents which show his involvement in the importation of vehicles with fake duty certificates, which ostensibly, was the basis of his alleged arrest by the Respondents.

The law is settled that fundamental rights of a citizen are not absolute. They can be curtailed by the appropriate authorities where there are grounds for doing so. See **Salihu v. Gana & Ors (2014)LPELR-23069(CA)**.

Furthermore, in **Ayakndue & Ors v. Ekprievan & Ors (2012)LPELR-20071(CA)**, the Court of Appeal, per Ndukwe-Anyanwu, JCA, held that:

“The law is that arrest properly made by the police cannot constitute a breach of Fundamental Rights. A citizen who is arrested by the Police in the legitimate exercise of their duty and on grounds of reasonable

suspicion of having committed an offence cannot sue the police in Court for breach of his Fundamental Rights.”

It is only where it has been shown that the powers of the police as donated by Sections 4 and 24 of the Police Act, have been channelled to improper use, that the Court can step in to stop the use of the powers for that improper purpose. See **Luna v. Commissioner of Police, Rivers State Police Command & Ors (2010)LPELR-8642(CA).**

In this case, the evidence adduced by the Applicant himself show his involvement in contravention of the law, which naturally warrants the intervention of the Police, being a law enforcement agency.

The Applicant in his affidavit failed to establish the improper use of its powers by the Police in the circumstances of this case.

The Applicant has not made out a case to entitle him to the reliefs sought in this application. The sole issue raised for determination in the Applicant's written address in support of the Motion on Notice is therefore resolved against the Applicant.

Accordingly, this application fails for want of proof and same is hereby dismissed.

**HON. JUSTICE A. O. OTALUKA
26/4/2023.**

