

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
DELIVERED ON WEDNESDAY THE 5TH DAY OF APRIL 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
MOTION NO. M/214/2018

IN THE MATTER OF AN APPLICATION BY AUSTINE OBULE
EMOVWORHOFOR THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS
UNDER THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE)
RULES 2009

BETWEEN

**MR AUSTINE OBULE EMOWWORHO-----APPLICANT
AND**

- 1. INSPECTOR GENERAL OF POLICE (IGP)**
- 2. THE DEPUTY INSPECTOR GENERAL OF POLICE
NIGERIA POLICE FORCE, FCID, GARKI, ABUJA-----RESPONDENTS**
- 3. DCP ELOHO EDWIN IPOZIAKPOR**
- 4. ENGR JATO ABIDO**

JUDGMENT

The Applicant filed this application pursuant to Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 praying the Court for the following reliefs:

1. A DECLARATION that the continuous harassments, intimidation, unlawful detention and humiliation of the Applicant by the 3rd Respondents at the instance of the 4th Respondent under the authority of the 1st and 2nd Respondents is vindictive, unwarranted, abrasive, oppressive and same constitute a flagrant breach of the Applicant's rights to personal liberty, dignity of human person, and right to property as respectively provided and enshrined under the Constitution of the Federal Republic of Nigeria, 1999 and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act AND, therefore, unconstitutional and illegal.

2. A Declaration that the continuous incarceration of the Applicant since Thursday 16th December 2021 by the Respondents is illegal, constitutional, null and void and same is in flagrant violation of the rights of the Applicant as guaranteed under the Constitution of the (Federal Republic of Nigeria, 1999).
3. A Declaration that having regard to the provision of Section 8(2) of the Administration of Criminal Justice Act (ACJA) and the ongoing investigation by the Respondent over a purely civil matter bordering on sufficiency and or adequacy of consideration; and the Respondents requests for refund of the consideration is a ploy by the Respondents to unlawfully, illicitly and illegally assist the 4th Respondent to recover the consideration paid over an already consummated civil contract and thus an abuse of the powers of the 1st to 3rd Respondents.
4. A Declaration that having regard to the provision of Section 8(2) of the Administration of Criminal Justice Act (ACJA) and the ongoing investigation by the Respondent over a purely civil matter bordering on sufficiency and or adequacy of consideration; and the Respondents requests for refund of the consideration is a ploy by the Respondents to unlawfully, illicitly and illegally assist the 4th Respondent to recover the consideration paid over an already consummated civil contract and thus is null, void and of no effect whatsoever and thereby liable to be quashed.
5. A Declaration that the continued detention of the Applicant in the facility of the 1st to 3rd Respondent at the instance of the 4th Respondent over a purely civil contract since Thursday 16th December till date, constitute flagrant breach of the fundamental Rights of the Applicant and an abuse of powers.

6. An Order quashing the ongoing investigation by the Respondent over a purely civil matter bordering on sufficiency and or adequacy of consideration; the said investigation being an attempt and a ploy by the Respondents to unlawfully, illicitly and illegally assist the 4th Respondent to recover the consideration paid over an already consummated civil contract.
7. AN ORDER of injunction restraining the Respondents, whether by themselves, their officers, agents, servants, privies or acting through any person or persons howsoever from further harassing, humiliating, embarrassing, threatening, incarcerating, or detaining the Applicant based on false and unfounded allegations premised essentially on civil contract as canvassed by the Applicant herein.
8. A sum of N150,000,000.00 (One Hundred and Fifty Million Naira) jointly and severally against the Respondents on the footing of aggravated and/or exemplary damages for flagrant violation of Applicant's Fundamental Right.

The Applicant stated four grounds upon which the application is predicated on and attached an affidavit of 26 paragraphs deposed to by one Emmanuel Onajomo. Also attached is a statement as required by the rules and a written address filed as argument of Counsel for the Applicant.

Applicant's Counsel moved the application and applied to withdraw relief two which was granted by the Court. Counsel relied on all the paragraphs in the affidavit and further affidavit as well as the written address filed as argument.

From the affidavit filed, the facts that prompted this application are as follows: -

That the 4th Respondent approached the Applicant in April 2021 to assist him in locating individuals/consultants who can process international

passports for certain countries. That Applicant discovered individuals who process Mauritius International Passports for Nigerians for a fee, which was communicated to the 4th Respondent by the consultant via a WhatsApp message.

That 4th Respondent chose to process the Mauritius International Passports for four individuals and paid a total of N10,500,000 (Ten Million, Five Hundred Thousand) to the Consultants via the Applicant's bank account; thereafter, four passports were acquired and delivered to the 4th Respondent. That a week after delivery of the Mauritius International Passports, the 4th Respondent approached Applicant claiming he was over charged for the transaction as he later found someone who processes Mauritius Passport cheaper than the N10,500,000.00 and the 4th Respondent asked for a rebate or for the Applicant and the consultants should take back the International Passports and refund the consideration. That 4th Respondent showed the Mauritius International Passports to his wife who works at the Nigerian Immigration Service, and she confirmed to him they were fake, but Applicant invited the consultants who processed the Mauritius passport, and they confirmed that the passports are genuine and that the Mauritius Embassy and not Nigerian Immigration service can confirm the genuineness or otherwise of the passports.

That the Consultants were held hostage until they yielded to the duress of the 4th Respondent and returned the sum of N3,000,000.00 to 4th Respondent, and were subsequently released. That on Thursday 16th December 2021, the 4th Respondent used his connection with the 3rd Respondent to arrest and detain the Applicant at the premises of the 2nd Respondent in Area 10, Abuja till date and Respondents vowed to keep the Applicant in detention throughout the Christmas and New Year holidays except the Applicant pays the outstanding sum of N7,500,000 (seven Million, five Hundred thousand Naira).

That Applicant was coerced to write his statement and was issued bail term of a surety who must be level 14 civil servant or a property owner in the Federal Capital Territory and the Applicant was able to get a credible and reliable surety. That the Respondents conducted the verification exercise but refused to release the Applicant on bond based on a new instruction from the 4th Respondent that he pay an additional 3 million Naira.

That a letter was written to the 2nd Respondents intimating them of the state of affairs and appealed for the release of Applicant on bail having fully complied with the stipulated bail conditions which Respondent failed to act upon which prompted this application.

In proof, Applicant attached two exhibits thus:

1. Whatsapp message forwarded by Applicant to the 4th Respondent attached and marked as Exhibit Austin 1.
2. Copy of the said Letter is herewith attached and marked Exhibit Austin 2.

From the written address filed, the Applicant's Counsel raised 3 issues for determination as follows:

1. Whether the consistent threats, harassment, arrest, detention, and extortion of the Applicants is not out rightly unconstitutional and a breach of the Applicants' fundamental rights as guaranteed under Chapter IV of the Constitution and the Charter.
2. Considering the entire circumstances of this case, whether the Applicants are not entitled to the reliefs claimed, particularly the relief as to aggravated/exemplary damages.
3. Whether the 1st to 3rd Respondents have the power to investigate allegations of breach of contract or a civil wrong.

Arguing the issues, Applicant's Counsel submitted that from the facts averred in the affidavit evidence and exhibits attached, the Applicant has established a prima facie case of infringement of Applicant's

constitutionally guaranteed rights by the Respondents. Submitted that the 4th Respondent expressly invited the 1st to 3rd Respondents to intervene in a civil complaint in disregard to the provisions of Section 8 of the Administration of Criminal Justice Act, as 1st to 3rd Respondents lack the powers to investigate any breach of contract or civil wrong.

Counsel therefore urged the Court to resolve all issues in favour of the Applicant and award damages against the Respondents for breach of Applicant's right.

Counsel relied on the following authorities:

1. Mr. Maithias Noruga & Ors v. Dr. Akinbowale R. Eniowo & Ors (2015) LPELR-24273(CA)
2. SPDC & Anor V. PESSU (2014) LPELR-23325(CA)
3. Bayol VS. Ahemba (1999) 7 SC (PT 1) 92
4. Iyalekhue VS. Omoregbe (1991) 3 NWLR (PT 177) 941.
5. Nkpa v. Nkume (2001) 6 NWLR (Pt. 710) 543 at 560-561.
6. Abdullahi v. Buhari (2004) 17 NWLR (Pt. 902) 278 at 303 A.
7. Amribank (NIG) Plc v. Onyima (2004) 2 NWLR (Pt. 858) 654 at 679-680 H-A
8. Nwangwu v. Duru (2002) 2 NWLR (Pt. 751) 265
9. ABN Lid. V. Akabueze (1997) 6 NWLR (Pt. 509) 374 at 406.
10. Shugaba Abdulrahman Darman v. Minister of Internal Affairs (1981) 2 NOR 459 at 460 and 520,
11. Rev. Paul Enanuga & Ors V. Hon. Nseabasi (Cornelius) Sampson (2012) LPELR-8487(CA)
12. Fawehinmi vs. IGP (2002) 7 NWLR (Pt. 767) 606." Per AKEJU, J.C.A. (P. 18, paras. C-E)
13. Ken McLaren & Ors V. James Lloyd Jennings (2002) LPELR-5784(CA),

In opposing the application, the 1st to 3rd Respondents filed a counter affidavit of 22 paragraphs deposed to by a Detective Josha Kantoma. Also filed is a written address and in opposing, 1st to 3rd Respondent's Counsel relied on all the paragraphs of the counter affidavit and it is 1st to 3rd Respondents defence from the facts deposed that they received a petition

by the 4th Respondents against the Applicant alleging Applicant of the offence of criminal conspiracy, forgery, obtaining by false pretence etc. That the Applicant was thereafter invited, and he volunteered his statement and was granted bail but was unable to meet the bail conditions/provide credible and reliable surety. That as a result of Applicant's inability to provide credible surety, the Police approached a Court for a remand order. That the 1st to 3rd Respondents, are constitutionally empowered to investigate any act of criminality which is what they did in this instance and the Respondents have not in any way violated any of the Applicant's fundamental right.

In proof, 1st to 3rd Respondents attached the following documents:

1. Petition written by the 4th Respondent against the Applicant as Exhibit NPF1
2. Applicant's statement as Exhibit NPF2
3. 4th Respondent's Statement as Exhibit NPF3
4. Copies of Mauritius passports and id cards as Exhibits NPF 4, 5, 6, 7 and 8.
5. Letter from immigration stating passports is fake as Exhibit NPF9
6. Remand Order as Exhibit NPF 10 and 11.

In the written address filed by 1st to 3rd Respondents, Counsel raised 3 issues for determination as follows.

- a. Whether the Applicant has made out a case under the Fundamental Rights Enforcement Procedure Rules that will entitle him to the reliefs sought in his application.
- b. Whether the investigation of the Applicant for Criminal Conspiracy, Forgery, Threat to life, Cheating, Criminal Misappropriation & Obtaining the total sum of N10,500,000.00 by false pretence constitute a violation of his fundamental right.

c. Whether this Honourable Court can restrain the 1st, 2nd, and 3rd

Respondents from the performance of their statutory duties.

Arguing the issues, 1st to 3rd Respondents' Counsel submitted that from the facts deposed to in the counter affidavit, the Applicant's rights were not breached in anyway as the invitation and investigation in respect of an alleged offence is lawful and not a violation of Applicant's fundamental rights. Submitted further that there was reasonable ground to invite the Applicant in order to investigate the alleged criminal acts. Counsel therefore urged the Court to dismiss the application with cost against the Applicant for being frivolous. 1st to 3rd Respondents' Counsel relied on the following cases.

1. Fajemirokun V. CB. (C.T) NIG. LTD (2002) 10 NWLR (PT.774) P. 95 AT110 Para: F-G.
2. McLaren V. Jennings (2003) NWLR (Pt. 808), p. 470
3. Ekwenugo V. FRN (2001) 6 NWLR (Pt.708) p. 171 at 177
4. Ikem V. Nwogwugwu (1999) 13 NWLR (Pt.633) P,140 AT 149 - 150 Paras: G- H.
5. Okanu V. State Commissioner of Police (2001) 1 CHR P. 407 at 411,
6. Jim - Jaja V. C.O.P (2011) 2 NWLR (Pt. 1231) 375 at 379 ratio 1.
7. Okanu V. Cop Imo state (Supra); Maya V. State (2007) 16 NWR (Pt. 1061) 483 at 487-488 ratio 3.
8. Nnamdi Azikiwe University V. Nwafor (1999) 1 NWLR (Pt. 585) 1616 at 136
9. A.G Anambra State V. UBA (2005) 15 (Pt. 947) P. 44 at paras: F- G
10. Onah V. Okenwa (2010) 7 NWLR PT. 119 P. 512
11. A.G Anambra State V. A.G Federation (2005) 9 NWLR (PT.981) p. 572
12. Dokubo Asari V. FRN (2007) V. 152 LRCN paras: F- K

The Applicant in response to the counter affidavit, filed a further affidavit of 10 paragraphs and a written address which focused on the fact of the illegality of the remand order as in Exhibit NPF 10 and 11, and as such,

Applicant's detention amounts to a breach of continuous Applicant's fundamental right.

I have considered the Applicant's application in its entirety as well as the further affidavit. I have also considered the 1st to 3rd Respondents counter affidavit and respective counsel's written addresses and the issue to be determined in this case is **"whether the Applicant has proved his claim before this Court to be entitled to the reliefs sought"**

The law is settled that any person who alleges that any of his fundamental rights as enshrined in the Constitution has been, is being or likely to be contravened may apply to a Court to seek redress. See Section 46 of the 1999 Constitution (as amended) which provides thus:

"Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress..."

In this instant application, the Applicant is alleging that his rights to personal liberty, dignity of person and right to property has been infringed upon by the Respondents. The law is trite that he who asserts must prove; hence, the Applicant has the burden of proving that he is entitled to the reliefs as prayed by placing material facts and/or evidence before this Court to be entitled to the said reliefs. See PROJECT ARCADE LTD & ANOR V. IGP & ORS(2022) LPELR-59127(CA), where Per SIRAJI, J.C.A in (Pp. 14-15 paras. E-E)held.

"Indeed, under Nigerian law, juristic and natural persons can invoke the fundamental rights provisions in the Constitution. However, the general position of the law is that in an action founded on the breach of a fundamental right, an applicant must succeed on the strength of his own case and not on the weakness of the defence. See Jolayemi & Ors

vs. Alaoye & Anor (2004) LPELR-1625 (SC). When a person alleges that his/her fundamental right to dignity is breached or likely to be breached, he or she must solidly put before the Court evidence to prove his allegation of such an infraction or likely infraction from the affidavit before the Court. See Omame vs. NPF & Ors (2021) LPELR - 54747 (CA). Accordingly, the onus of proof is on an applicant to establish by credible and cogent evidence that he is entitled to the reliefs endorsed in the originating process - to wit, that his fundamental rights has been breached or is likely to be breached; and unless the applicant discharges this burden of proof on a balance of probabilities, the burden does not shift to the respondent.”

Hence, it is imperative that Applicant proves by credible affidavit evidence that his fundamental rights were infringed by the conducts or acts of the Respondents.

In this instant case, having considered the entirety of the facts as stated in the affidavit evidence of the Applicant as stated in the earlier part of this judgment vis a vis the reliefs sought by the Applicant, the question to be answered is was Applicant's rights infringed upon by the Respondents.

I must at this juncture point out that the duty of the Court in claims such as this is not to conduct an investigation or establish the guilt or innocence of any party relating to any allegation of crime, neither is the Court bound to establish the liability or otherwise of a party as it relates to civil transactions which a party may or may not have been involved in. I say this because, the facts of the affidavit of both parties are riddled with facts not directly relating to issues on fundamental human right therefore, this court would sieve and rely only on facts as it relates to breach of fundamental right as the main essence of the fundamental right enforcement procedure

is for the Court to enforce the protection of persons right as enshrined in the Constitution.

In this instant case, the Applicant averred that he was on the 16th of December 2021, arrested and detained by the 3rd Respondent on the instructions of the 4th Respondent and was kept till he repaid the sum of N7,500,000.00 of the 4th Respondent. That he was issued bail on conditions which he fulfilled but Respondents refused to release him and there was no basis for the arrest as the transaction leading to the arrest and detention borders on sufficiency and or adequacy of consideration.

On the other hand, the 1st to 3rd Respondents averred that applicant was arrested upon receipt of a petition by the 4th Respondent and the petition is based on the allegation of forgery, obtaining by false pretence, etc. that after obtaining Applicant's statement, he was granted bail but couldn't fulfil the bail condition.

As rightly submitted by the Counsel to the 1st and 3rd Respondents, the police have statutory duties and powers to enforce the law and investigate crimes and offences. In doing so, they have the right and power to invite/arrest persons in course of their investigation. However, such must be done within the confines of the law. On this basis, the 1st to 3rd Respondents invited the Applicant to answer to Petition marked as Exhibit NPF 1 received from the 4th Respondent in relation to the offences of fraud and obtaining by false pretence. It is therefore my view that the 1st to 3rd Respondents had sufficient grounds to have invited/arrested the Applicant. This was the position of the Court in the case of MURTALA v. DG, SSS & ORS (2023) LPELR-59323(CA) where Per Banjoko JCA in (Pp. 25 paras. C) held that arrest made by Law Enforcement Agents in the legitimate exercise of their duty and on the grounds of reasonable suspicion that an offense has been committed, cannot constitute a breach of Fundamental Human Right.

Now in this case, having established that the arrest was done in the 1st to 3rd Respondents legitimate exercise of their duty, the next issue is whether the continuous detention of the Applicant amounts to a breach of Applicant's right.

The Applicant was arrested on the 16th of December 2021, and it is an undisputed fact that Applicant was granted bail. However, there is nothing before this Court to state that Applicant stayed beyond the required time as prescribed by Section 35 of the 1999 Constitution (as amended).

Applicant contended that he fulfilled the bail condition but was still refused bail. This fact was countered by the Respondent in paragraphs 5C of their counter affidavit wherein they stated that Applicant could not meet the bail condition/provide credible and reliable surety. The burden therefore shifted to the Applicant to show that indeed, the sureties presented were credible which they failed to do in their further affidavit instead, Applicant chose to dwell on the issue of the remand order by the Magistrate Court. The issue before me is on breach of Applicant's fundamental right to liberty and Applicant's contention on the legality or illegality of the remand order is of no moment as Applicant admitted that he was granted bail by the Respondents but failed to state the vital facts on the length of detention prior to when the respondents granted him bail neither in the affidavit or in the further affidavit. If the applicant had stated that he was kept in detention more than the required constitutional requirement without being charged to Court prior to being granted bail, then the issue of the legality or illegality of the remand order would come into play.

The Applicant in the affidavit admitted that he was granted bail by the Respondent, the failure of the Applicant to meet the bail conditions, which led to his continuous detention cannot be said to amount to unlawful detention. The Court in the case of *NWAFOR V. EFCC (2021) LPELR-52949 (CA)* Per Georgewill JCA on pg.51-54 para-E-C held

"..... In law, when a person is arrested by a law enforcement agency, the granting of bail may be with or without sureties. Thus, where a suspect is taken into custody, and it appears to the officer that the enquiry into the case cannot be completed forthwith, he may discharge the Suspect on his entering into recognizance, with or without sureties for a reasonable amount, to appear at the Police Station and at such times as are named in the recognizance. It follows therefore, where a Suspect, such as the Appellant, though entitled to bail, is granted bail and the bail conditions include the production of sureties, failure by him to meet or perfect the bail condition for his release from detention, would not ipso facto render such a detention illegal and unconstitutional. In my view, such a failure by a Suspect to meet and or perfect the conditions of his bail resulting in his continued detention cannot be regarded or treated as an act or fault attributable to the arresting authority unless it is shown that the bail conditions were unreasonable and merely intended to punish the Suspect and to continuously keep him in detention. In other words, so long as the conditions for bail is not unreasonable and the Suspect fails to meet or perfect the bail conditions, his continued detention awaiting when he meets and perfects the bail conditions or when he is charged to Court, cannot ipso facto render such a detention unlawful....."

Banking on the above authority, it is my view that the failure of the Applicant in fulfilling the bail conditions which led to his continuous detention cannot be said to amount to unlawful detention. It is therefore

my considered view that the Applicant did not adduce sufficient evidence to substantiate the allegation of violation of his fundamental right as enshrined in the Constitution against the 1st to 3rd Respondents.

As it relates to the 4th Respondent, the law is trite that he who asserts, must prove;the Applicant has also failed to prove how his rights were violated by the 4th Respondent. The 4th Respondent who wrote a legitimate complaint to the police as in Exhibit NPF1 reporting a crime cannot be said to be responsible for what happens thereafter as that falls within the purview of the police.In the case of OKAFOR VS. ABUMOFUANI (2016) LPELR - 40299 (SC) the apex Court held that it is trite that where a person makes a genuine complaint against another to the police and the latter is arrested, detained,and prosecuted by the police, he cannot be said to have put the law in motion against him.

Consequently, the Applicant's suit is hereby dismissed having failed to place before this Court, vital evidence to succeed to the claims placed before this Court.

Parties:Applicant is absent.

Appearances:Adewale E. Odeleye appearing for the Applicant. O. Danjuma appearing for the 1st -3rd Respondents. 4th Respondent is not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
5/04/2023