

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI –ABUJA**

**HIS LORDSHIP: HON.JUSTICE M.S. IDRIS**

**COURT NUMBER: 28**

**DATE:-15<sup>TH</sup> JUNE, 2023**

**FCT/HC/CV/28/2022**

**BETWEEN:**

**TUNDE OGUNDAINI ESQ-----**

**APPLICANT**

**AND**

- 1. AN-AM CLASSIC NIGERIA LIMITED**
- 2. FEDERAL CAPITAL TERRITORY  
ADMINISTRATION (FCTA)**

**RESPONDENTS**

**JUDGMENT**

By virtue of the Amended Originating Summons filed on 22<sup>nd</sup> March, 2023, the Applicant sought for the reliefs contained in the Originating Summons against the Respondents.

The Respondents were served with the originating processes, and repeated hearing notices were served on the 1<sup>st</sup> Respondent through substituted means. Nevertheless, the Respondents failed to appear nor file any process in reaction to the Applicant's application.

A brief fact of the Applicant's case is that on 24<sup>th</sup> May 2022, the Applicant, a legal practitioner, was driving to a meeting with foreign buyers of his client's property at Candellux Imperial Hotel and Suites in Area 1, Abuja- FCT, after finishing his court proceeding.

The Applicant was accosted by the 1<sup>st</sup> Respondents who claimed to be collecting levy in order to access a public road in Area 1, beside Conoil Petrol Station.

The Respondent barricaded the road and demanded the sum of One Hundred Naira (N100.00) from vehicle owners for plying the said road. The Applicant who did not have the cash, pleaded with the Respondents to allow him access to the road but the Respondents refused. The Applicant was detained for several minutes until he could source money to pay the Respondent.

The Applicant averred that his detention by the 1<sup>st</sup> Respondent and the restriction of his freedom of movement led to the Applicant's loss of brief and income.

In his written address in support of the Application, the Applicant raised three issues for the court's determination:-

1. Whether the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent who is a private company has the right to assess, request, collect, and/or block the public road or any other road within the Federal Capital Territory in order to access, request, collect or recover any levy and/or tax from the Applicant or any member of the public at any rate for themselves and on behalf of any Government, Ministry and/or Agency that is driving on a public road.
2. Whether the unlawful restriction of the movement, intimidation, harassment, and detention of the Applicant and his 2009 Dark Grey Colour Honda Accord Vehicle in a burning hot sun, on the 28<sup>th</sup> of May, 2022 for about an hour by the Respondent without any just cause or crime committed and without a court order does not amount to a gross violation of the fundamental rights of the Applicant to human dignity, personal liberty, fair hearing and freedom of movement as provided and guaranteed by sections 34, 35,

36 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

3. Whether the violent and reprehensible conduct, degradation of Applicant's humanity and professionalism, unlawful restriction and detention of the Applicant's 2009 Dark Grey Colour Honda Accord Vehicle by the Respondent without any legal backing or order of a court of competent jurisdiction in violating his Fundamental Rights as in the instant case entitles the Applicant to special, general, aggravated and exemplary damages against the Respondents.

On issue 1, the Applicant argued that by virtue of section 1 of the Taxes and Levies (Approved List for Collection) Act, Cap T2, LFN, 2004, only the Federal, State, and Local Government shall be responsible for collecting tax and levies from Nigerians. Furthermore, section 2(1) and (1) of the said Act provides that no person other than the appropriate tax authority shall assess or collect, on behalf of the government, any tax or levy and that no person, including a tax authority, shall mount a roadblock in any part of the Federation for the purpose of collecting any tax or levy. Counsel submitted that by the foregoing provisions, the 1<sup>st</sup> Respondent is not one of the authorities considered to collect taxes or levies on behalf of the Federal Capital Territory. Either the Joint Tax Board or the Federal Capital Territory Inland Revenue Services is saddled with the responsibility of collecting taxes and levies. Counsel further maintained that the actions of the 1<sup>st</sup> Respondent in mounting roadblocks for the purpose of enforcing tax or levy was wrong and criminal.

Arguing further, counsel cited Paragraphs 1 (e) and (f) of the Fourth Schedule of the 1999 Constitution of the Federal Republic of Nigeria (as amended), and stated that the administration and collection of levies regarding motor parks,

public highways, parks, gardens, and open spaces are the responsibility of the Local Government in the States and Area Councils in the Federal Capital Territory and not the State or Federal Capital Territory Administration.

On issue 2, counsel submitted that the Applicant was harassed by the Respondent under the auspices of collecting a levy to access a publicly constructed road. Counsel stated that the arrest, and public embarrassment of the Applicant for no just cause and without a court order is a clear violation of his human dignity and inhuman or degrading treatment of the Applicant which is forbidden by Section 34 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Counsel also argued that by restricting the Applicant's movement, the Respondent violated the Applicant's right to freedom of movement and personal liberty as enshrined in sections 35 and 41 (1) of the 1999 Constitution. Counsel relying on the decided case of ***JIM-JAJA V. COP (2011) NWLR (PT.1231) 375***, argued that a complete deprivation of any person's liberty for any time, however short, without lawful excuse, amounts to a violation of the right to personal liberty.

On issue 3, Counsel, relying on section 35 (6) of the 1999 Constitution, argued that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person. See ***IGBO & ORS V. DURUEKE & ORS (2014) LPELR -22816 (CA)***. He urged the court to grant all the reliefs of the Applicant.

From the totality of the Applicant's arguments, I distil two vital issues worthy of the Court's consideration:-

1. Whether the 1<sup>st</sup> Respondent which is a private company has the right to assess, request, collect, and/or block the public road or any other road within the Federal Capital Territory in

order to access, request, collect or recover any levy and/or tax from the Applicant or any member of the public at any rate for themselves and on behalf of any Government, Ministry and/or Agency that is driving on a public road.

2. Whether the 1<sup>st</sup> Respondent's treatment of the Applicant violated any of his fundamental rights.

Taxes/Levies are serious issues in any part of the world. The government created them, and their prices/amounts are certain and predictable. In Nigeria, all taxes/levies must be created by law and be assessed and collected by either Federal, State, or Local Governments.

For purpose of clarity as to who has power to collect taxes/levies in Nigeria, let me reproduce the provision of section 2 (1) and (2) of the Taxes and Levies (Approved List for Collection) Act CAP T2, LFN, 2004:-

*“(1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, no person, other than the appropriate tax authority, shall assess or collect, on behalf of the Government, any tax or levy listed in the Schedule to this Decree and members of the Nigeria Police Force shall only be used in accordance with the provisions of the tax laws.*

(2) No person, including a tax authority, shall mount a roadblock in any part of the Federation for the purpose of collecting any tax or levy.

The above provision is as clear as white linen and needs no elaborate and strenuous interpretation.

None of the governments can engage, authorize, delegate, use, or appoint any person, firm, or group to assess or collect taxes/levies on its behalf. The only appropriate tax authorities

empowered and allowed to assess and collect taxes/levies in Nigeria are the Federal Inland Revenue Services (FIRS), the State Board of Internal Revenue, and the Local Government Revenue Committee, by whatever name they call themselves in the respective states and local governments across Nigeria. As well as a Ministry, Government department, or any other Government body charged with responsibility for assessing or collecting a particular tax.

NOTE, that no State Government (including its House of Assembly) or Local Government has powers to make any law or Bye-Law that will allow the appointment and engagement of any person/firm in the assessment or collection of any tax/levy in any part of Nigeria.

I have seen several persons and firms parading letters of engagement from some tax/levy agencies of government, such persons should be properly guided.

It is also a criminal offense for unauthorized persons to collect tax/levies, and/or to mount a roadblock on a public road for the purpose of collecting any tax or levy. In fact, section 3 of the Taxes and Levies (Approved List for Collection) Act CAP T2, LFN, 2004 provides as follows:-

*"A person who*

*(a) collects or levies any tax or levy; or*

*(b) mounts a roadblock or causes a roadblock to be mounted for the purpose of collecting any tax or levy, in contravention of section 2 of this Decree, is guilty of an offence and liable on conviction to a fine of N50,000 or imprisonment for 3 years or to both such fine and imprisonment."*

I find the 1<sup>st</sup> Respondent's action reprehensible and criminal. The 2<sup>nd</sup> Respondent in the first place, had no power to delegate the responsibility of collecting taxes or levies to the 1<sup>st</sup> Respondent, and I doubt if the 2<sup>nd</sup> Respondent indeed appointed the 1<sup>st</sup> Respondent as its agent, as there is no evidence to that effect. The 1<sup>st</sup> Respondent in carrying out this illegal task, further heightened its illegality by mounting roadblocks on a public road in order to obtain an illegal tax from the Applicant and other members of the public. What impudence!

This alleged infraction of the law by the 1<sup>st</sup> Respondent should be investigated by relevant law enforcement agencies, and if found guilty, they should be prosecuted.

The Applicant is not alone in this case. Across the Federal Capital Territory, residents who run small businesses or hawk at local markets as well as motorists are facing the same illegal taxation and extortion by illegally commissioned agents. When they show resistance to pay, they are threatened or harassed by local thugs who work with illegal tax agents. Women and other petty traders in the market who depend on daily sales to feed their families and pay other utility bills are always at the receiving end of such harsh treatment.

In a situation where the Constitution of the Federal Republic of Nigeria renders basic social services non-justiciable (chapter Two of the 1999 Constitution), the Government must be weary of overburdening the citizens with all manner of levies and taxes. It accordingly accords, with the spirit and principle of the Constitution that taxation should be controlled and vetted by the Joint Tax Board. While taxation is the life wire of Government expenses, from which a responsible government provides for the welfare of its people, over-taxation resulting from a *lessez-affaire* tax doctrine could be counterproductive.

Having resolved issue 1, to the effect that the 1<sup>st</sup> Respondent did not have the power to collect tax or levies on behalf of the 2<sup>nd</sup> Respondent or mount roadblocks for that purpose, I hereby grant reliefs 1 to 6 as prayed by the Applicant.

On issue 2, the Applicant under oath made serious allegations of the infringement of his fundamental right to liberty and freedom of movement leading to a loss of his brief and prospective income. These averments are clear, direct, and pungent. They all make serious allegations against the Respondents and the allegations without doubt, sequentially dealt with infringement of the Fundamental Rights of the appellant to his Personal Liberty and Freedom of Movement.

These damning allegations were not controverted or countered in this case. There is therefore no basis for the Court not to believe the allegation as made by the applicant.

The averments therein are capable of belief as the true state of affairs that occurred between the Applicant and the 1<sup>st</sup> Respondent on the 24<sup>th</sup> of May, 2022. These facts have not been denied by the Respondents by filing a Counter-Affidavit. The presumption of the law is that those facts have been admitted or that the Respondents have no defence to the facts deposed therein. See ***IJEZIE V. IJEZIE (2014) LPELR-23773 (CA), HONDA PLACE LTD V. GLOBE MOTORS HOLDINGS (NIG) LTD (2005)11 MJSC 1 AT 15*** where KATSINA ALU JSC, later CJN held:

"No Counter-Affidavit was filed by the Respondent. With that, the facts deposed to in support of the application were neither challenged nor disputed by the Respondent. What this means is this: those facts remain unchallenged and uncontroverted. The inevitable consequence is that those facts deposed to in the Affidavit filed by the Applicant must be deemed to have been admitted by the Respondent and



The Affidavit of the Applicant is detailed to show how his Fundamental Human Rights were breached. The Applicant, by his Affidavit and exhibited documents, have chronicled in a detailed manner, even providing pictorial evidence of the roadblock by the 1<sup>st</sup> Respondent, the occurrence of events from about past 10 am when his movement was restrained by thugs of the 1<sup>st</sup> Respondent till about 11: 20 am when he was released from the 1<sup>st</sup> Respondent's restraint. In the circumstance, by the Affidavit evidence of the Applicant, he has established breach of his Fundamental Rights as enshrined in Sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) as well as how he lost income as a result of the action of the 1<sup>st</sup> Respondent, and therefore have discharged the onus of proof placed on him against the Respondent and I so hold.

It will not be in the spirit of constitutionalism and fairness for us to see an infraction of the Rights of the Citizens and close our eyes and timorously walk away.

I hereby award the sum of N 500,000.00 against the 1<sup>st</sup> Respondent, in favour of the Applicant. This sum must be paid by the 1<sup>st</sup> Respondent to the Applicant as exemplary and aggravated damages for the unlawful restriction of movement and detention of the Applicant for about an hour. I so order.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

Appearance

OgeziAustin:-

For the Applicant

