

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:12TH JULY,2023

FCT/HC/CV/2204/2023

BETWEEN:

MR. MUSTAPHA TSOHO ABDULLAHI-----

APPLICANT

AND

1.ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC)

2.THE CHAIRMAN ECONOMIC AND FINANCIAL CRIME COMMISSION MR.

RESPONDENTS

3. ALIYU SARKI (INVESTIGATING POLICE OFFICER)

4.MR. ALIYU HAIDAR MUAZU

JUDGMENT

This motion was filed by the Applicant on the 1st day of February 2023, vide a motion on notice. The following reliefs were sought by the Applicant:-

1. A declaration that the threat of arrest and detention of the Applicant by the Respondents on a simple civil transaction upon which the 1st to 3rd Respondents have sent invitation to the applicant is a threat for the violation of the Applicant's fundamental right to personal liberty as enshrined in the constitution of the Federal Republic of Nigeria 1999 as amended.
2. A declaration that the consequential harassment and embarrassment meted on the Applicant by the Respondents by sending invitation to him on social media WhatsApp is unconstitutional and it violated the Applicant's right to dignity of

human person and privacy as entrenched in the Constitution of the Federal Republic of Nigeria 1999 as amended.

3. A declaration that the involvement of the 1st to 3rd Respondents in a civil transaction between the 4th Respondent and the Applicant is unlawful, unconstitutional null and void
4. A declaration that the threat of the Respondents to arrest the Applicant and detain him perpetually amount to gross violation of the right to personal liberty as enshrined under the constitution of Federal Republic of Nigeria 1999 as amended.
5. An order of perpetual injunction restraining the Respondents either by themselves, privities, agents, servants, representatives and any other persons deriving his authority from them from further inviting, arresting, detaining, harassing and embarrassing Applicant in respect to the subject matter of this suit.
6. And for such further order(s) as this honourable court may deem fit to make in the circumstances of this case.

The motion on notice was supported by a 31-paragraphed affidavit deposed by the Applicant in which the Applicant deposed that following a civil disagreement between the Applicant and the 4th Respondent, the 1st to 3rd Respondent threatened to imprison the Applicant and also ordered the freezing of the Applicant's wife bank account which the Applicant uses for his business.

The motion on notice was further supported by various exhibits detailing the transaction between the Applicant's company and the 4th Respondent and also an invitation by the 3rd Respondent inviting the Applicant to the EFCC Kaduna Zonal Command.

The application was further supported by a written address wherein the Applicant raised two issues for determination. The first and major issue was that the 1st to 3rd respondent sought to violate the Applicant's fundamental rights in a clearly civil dispute between the Applicant and 3rd Respondent. The Applicant based his argument on **Section 46(1) of the Constitution of the Federal Republic of Nigeria**

1999 which provides for application to the High Court whenever any person's right is likely to be contravened. The Applicant further **cited Section 4 of the Police Act, Section 6 and 7 of the Economic and Financial Crime Commission Establishment Act 2004** which provides for the duties of these statutory bodies but clearly does not provide for the settlement of civil disputes. The second issue raised by the Applicant focused on whether or not the Applicant is entitled to the reliefs sought for the protection of his fundamental right against the Respondents. The Applicant thus claimed to be entitled to an injunction restraining the Respondent from infringing the Applicant's fundamental rights.

In response to the application, the Respondents (1st to 3rd Respondents) filed a 12-paragraph counter affidavit deposed to by one Abduljalal Ibrahim Gatawa who is a staff of the Economic and Financial Crimes Commission.

In the Respondents' written address in opposition to the application, the Respondents raised 3 major issues for determination. The first issue is if the Respondent is in breach of the Applicant's fundamental rights. The Respondent in this regard submitted that they were not in breach of the Applicant's fundamental rights citing **Sections 6, 7, 8(5), 13(1) 41, and 46 of the Economic And Financial Crime Commission Establishment Act 2004** and Section 4 of the Police Act which empowers the Economic And Financial Crime Commission and the Police Force to investigate cases of economic and financial crimes respectively. The Respondents asserted that it was acting within the ambit of its powers since there is reasonable suspicion that the Applicant committed a crime and the application by the Applicant is merely a facade to stall investigation and possible investigation by the 1st to 3rd respondent.

Another major issue raised by the Respondents is on the territorial jurisdiction of this Court to handle this matter. The Respondents averred that the facts and circumstances in this case all occurred in

Kaduna which is outside the jurisdiction of this Court citing the case of *IBORO V FRN (2009) 3 NWLR (PT.1128) PAGE 283 AT 323* amongst others that buttress territorial jurisdiction of the court.

The Applicant filed a further and better affidavit wherein he deposed not to have received the sum of N49,000,000.00 as alleged by the 1st to 3rd Respondents neither was the purchase of shares a condition precedent for the contract awarded to the Applicant by the 4th respondent.

In the Applicant's reply on points of law, the Applicant maintained that the petition by the 2nd Respondent to the Economic and Financial Crimes Commission was backdated which doesn't show the true reflection of the case at hand. The Applicant further averred that the 1st and 2nd Respondents failed to conduct full investigation to ascertain if any alleged crime has been committed but were rather more interested in detaining him the Applicant. The applicant further urged this honourable court to discountenance the affidavit of the Respondents for being self-contradictory, citing the case of *OCHOR CHRISTOPHER OCHOR V. DR. ALPHONSUS (2008) 13 NWLR (PT 1105), page 524 AT 532 RATIO 9* in support.

In conclusion, the Applicant averred that the Respondent's challenge of the territorial jurisdiction was unfounded as the matter borders on fundamental rights and as such, the Applicant has the freedom to approach any High court in that state where his rights is likely to be violated.

Having critically considered the facts, evidence and legal arguments of all the parties in this suit, I believe that three issues can properly aid the Court in its ruling:-

1. If the applicant's fundamental human rights as provided by the constitution was breached or likely to be breached by the 1st to 3rd Respondent.

2. The second issue bothers on the territorial jurisdiction of this honourable court to entertain this matter.

With regards to the first issue, I painstakingly perused the Applicant's application to discover the particular fundamental rights that was breached by the 1st to 3rd Respondents. Admittedly, the Applicant made reference to section 34(1) and 35(1) of the constitution which provides for right to the dignity of the human person and right to personal liberty. However, the Applicant failed to show how these rights were contravened or likely to be contravened by the Respondents. Even the exhibit attached by the Applicant shows that the Applicant was merely invited by the 1st to 3rd Respondents for an "interview."

Can this invitation be regarded as a threat to the Applicant's right to personal liberty? I do not think so. I must refer to the case of **AMYN INVESTMENT LTD & ORS v. EFCC & ANOR (2020) LPELR-58713(CA)** where the court held that a mere invitation by law enforcement agencies does not amount to a breach of fundamental human rights.

For an application alleging infringement of the Applicant's fundamental rights to succeed, he must place before the Court all vital evidence regarding the infringement or breach of such rights. It is only thereafter that the burden shifts to the Respondent. Where that has not been done or scanty evidence was put in by the Applicant, the Court can strike out such application for being devoid of merits. **See FAJEMIROKUN V C.B. (C.L.) (NIG) LTD (2002) 10 NWLR (prt. 724) 95.**

The question of infringement of fundamental rights is largely a question of fact and does not so much depend on the dexterous submission of Counsel on the law. So it is the facts as disclosed by the affidavit evidence that is usually examined, analyzed and evaluated to see if the fundamental rights have been eviscerated as claimed or otherwise dealt with in a manner that is contrary to the Constitutional and other provisions on the fundamental rights of an individual.

OKAFOR V LAGOS STATE GOVERNMENT & ANOR (2016) LPELR - 41066 (CA).

In so far as the circumstances of the Respondent's invitations amounted to the likely curtailment of the Applicant's inviolable/inalienable rights to personal liberty, the Court cannot award any compensation in the absence of proof of loss or injury to the Applicant. In *JIM-JAJA V. C.O.P., RIVERS STATE [2013] 6 NWLR (PT. 1350) 225 AT 254*, Muntaka-Coomassie, JSC, opined:-

"The Appellant's claim is in connection with the breach of his fundamental rights to his liberty by the respondents. The onus is on him to show that he was unlawfully arrested and detained i.e. that his fundamental right has been violated, if this is proved, by virtue of the provisions of Section 35(6) of the 1999 Constitution Federal Republic of Nigeria, the complainant is entitled to compensation and apology, where no specific amount is claimed. Where a specific amount is claimed, it is for the Court to consider the claim and in its opinion, the amount that would be justified to compensate the victim of the breach. In this respect, the common law principles on the award of damages do not apply to matter brought under the enforcement of the Fundamental Human Rights procedure..."

The second issue borders on the territorial jurisdiction of the Court to hear this matter. This is however quite a dicey issue. Because as stated above, after carefully perusing the facts of the Applicant's case, there is no indication that the rights of the Applicant were contravened or likely to be contravened.

Going from the Exhibit tendered by the Applicant, the Applicant was invited to the EFFC Kaduna Zonal Command for an 'Interview.' I understand that the Applicant felt that this interview was a ploy to deny him his fundamental right to personal liberty (this has been addressed in the preceding paragraph). As such, it follows that if the

Applicant's right was to be breached by the Respondent, it would have taken place in the EFFC Kaduna Zonal Command. Section 46 (1) of the 1999 Constitution provides as follows:

"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."

The import of the above provision is that an application to secure the enforcement of the fundamental rights filed outside the state where the infringement took place or is to take place will be incompetent. From the above provisions, it is evident that based on the applicant's misguided belief that his rights were likely to be breached by the EFFC Kaduna Zonal Command, the right court to entertain this matter is the High Court Kaduna State.

Consequently, this application is hereby dismissed.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Josiah Annas Ob--:- For the Applicant

U.AAdeleje:- Holding the brief of Abubakar Sani for the 4th
Respondent