

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
COURT: 28**

Date:- 11TH JULY, 2023

FCT/HC/: M/167/2021

BETWEEN

ODO VINCENT OKOKO

CLAIMANT/APPLICANT

AND

1. AIR MARSHAL ISAAC M. ALFA
2. MRS. GRACE ONYEMOWO ALFA
3. ECONOMIC AND FINANCIAL CRIMES
COMMISSION (EFCC)
4. NIGERIAN AIR FORCE
5. INSPECTOR GENERAL OF POLICE

RESPONDENTS

JUDGEMENT

This motion was filed by the Applicant on the 17th day of October 2021, vide an originating motion on notice. The following reliefs were sought by the Applicant: -

1. A Declaration that the Applicant's invitation by the 3rd Respondent via a text message and phone call on 12th January 2021 whereby the Applicant was momentarily detained and subjected to intense interrogation and questioning for several hours on the instigation of the 1st and 2nd Respondents in respect of a land transaction between the 1st & 2nd Respondents and one Tatibah Eden Ltd which matter the 3rd Respondent had

in her letter dated 22nd September, 2014 declared a civil matter when a complaint was submitted to it by the Applicant for investigation and which land issue had been decided by a court of competent jurisdiction between the parties and a judgment sum of N40 Million awarded against the said Tatibah Eden Ltd contravenes the provision of Section 7 of the Administration of Criminal Justice Act, 2015 and same is in breach of Sections 35 and 41 of the Constitution Federal Republic of Nigeria, 1999 (as amended) which guarantee the Applicant's fundamental rights to personal liberty and freedom of movement and same is therefore illegal and unconstitutional.

2. A DECLARATION that the Applicant's detention for 8 hours on 12th January, 2021 between the hours of 9am in the morning and 5pm in the evening by the 3rd Respondent on the instigation of the 1st and 2nd Respondents in connection with the subject matter of this suit which the 3rd Respondent knows is civil in nature based on their letter of 22nd September, 2014 contravenes the provision of Section 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which guarantees the Applicant's right to personal liberty and same is therefore illegal, unlawful and unconstitutional.
3. A DECLARATION that the subsequent continued pestering, harassment and intimidation of the Applicant by the 3rd Respondent by way of phone calls and text messages asking the Applicant to be reporting to the Commission's office at No. 5, Formella Crescent, Wuse 2, Abuja on a weekly basis on the instigation of the 1st and 2nd Respondents in respect of the subject matter of this suit contravenes Sections 34 & 35 of the Constitution Federal Republic of Nigeria, 1999 (as amended) which guarantee Applicant's rights to personal liberty and

dignity of human person respectively and same is therefore illegal, unlawful and unconstitutional.

4. A PERPETUAL ORDER of the Honourable Court restraining the 1st and 2nd Respondents from further using the 3rd 4th and 5th Respondents and/or their Agents to disturb, harass, intimidate or pester the Applicant by way of phone calls by their officials or by whatever means or medium or to threaten arrest or arrest the Applicant in respect of the subject matter of this suit.
5. AN ORDER of the Honourable Court directing the Respondents jointly and severally to pay the sum of N100, 000, 000 (One Hundred Million Naira) to the Applicant as compensation for the violation of his fundamental rights.

Summarily, the Applicant based the application on the grounds that his company and the 1st and 2nd respondent were defrauded by one Tatibah Eden Ltd. The Applicant further stated that the 2nd respondent obtained judgement of the sum of forty Million (40,000,000.00) against Tatibah Eden Ltd, despite this, the applicant is continuously harassed by the 3rd to 5th Defendant on the insistence of the 1st and 2nd Respondents.

The Applicant's application was supported by a statement made pursuant to Order II Rule 3 of FREP 2009 where the applicant sought for the same reliefs as contained in the origination motion on notice.

The motion on notice was further supported by a 46 paragraphed affidavit deposed by the Applicant. The applicant deposed that his company Faiza Atlantic International Limited was engaged vide a Memorandum of Understanding to act as a marketing and financial consultant for Tatibah Eden Ltd. The applicant deposed to have marketed the plots of land to the 1st and 2nd respondent and they subsequently made payments (N17,600,000.00 and

N40,000,000.00 respectively) into the Applicant's company account in which the applicant remitted same to Tatibah Eden Ltd. The applicant deposed to have found out of the fraudulent activities of Tatibah Eden Ltd and petitioned to the 3rd Respondent on same matter, however, the 3rd respondent denied the petition on the grounds of being a civil matter and outside its administrative scope. The applicant deposed to have testified against Tatibah Eden Ltd in the case between it and the 2nd Respondent and was surprised when he was invited by the 3rd Respondent and interrogated for 8 hours on the same issue which was initially deemed a civil matter by the 3rd Respondent.

In the Applicant's written address in support of the application, the applicant sought for the reliefs as contained in the originating motion. The applicant raised a fundamental issue that the constant invitation by the 3rd Respondent and 5th respondent and threat to use the 4th Respondent amounted to a breach of the Applicant's fundamental rights to personal liberty, dignity of human person and freedom of movement as guaranteed in the constitution. The applicant heavily relied on an incident that occurred on the 12th day of January, 2021 where in the Applicant was detained for 8 hours by the 3rd Respondent citing that it amounted to a breach of the applicant's right to personal liberty and making reference to the case of ***JIM-JAJA V. COP (2011) 2 NWLR (PT 1231) CA 375***. The Applicant further attested that he was detained without any reasonable belief or suspicion that he committed an offence known to law. Lastly, the applicant emphasized that since the 3rd Respondent declined on dabbling into the matter on the grounds that it was a civil matter, thus the subsequent interrogation by the 3rd Respondent on the same matter was unconstitutional citing the case of ***EFCC VS.***

DIAMOND BANK PLC & ORS (2018) LPELR-44217n support.

The 1st and 2nd Respondent filed a joint counter affidavit on the 16th day of March 2021 deposed by the 2nd respondent. The 2nd respondent deposed that the Applicant was her account Manager in Oceanic Bank PLC (now Ecobank PLC) as such had a purview of her account balance and persuaded her to buy plots of land from Tabitha Eden Ltd. The 2nd Respondent further deposed that the applicant discouraged the 1st and 2nd Respondent performing due diligence in ensuring that Tabitha Eden Ltd had authority to allocate lands with the assurance that the solicitor of the applicant had performed due diligence in ensuring that the entire transaction is legitimate. While the 2nd respondent admitted that judgement has been given against Tabitha Eden Ltd by a court of competent jurisdiction in which the applicant testified against Tabitha Eden Ltd, the 2nd responded asserted that in the enforcement of the judgement, she realized that Tabitha Eden Ltd has no properties and was a fraudulent entity. In light of this, the 2nd respondent deposed that she realized she was hoodwinked by the Applicant into not pressing charges and thus followed up by writing a petition to the 3rd respondent to investigate the financial fraud committed on her and the 1st Respondent. The 2nd Respondent asserted that the petition submitted by her and the 1st Respondent was substantially different from the petition submitted by the applicant, pointing out that her petition called for the 3rd respondent to investigate a case of fraud while the applicant's petitioned for the 3rd Respondent to dabble into a civil matter. The 2nd respondent further deposed that the fundamental rights of the Applicant was not infringed upon rather the 3rd Respondent was carrying out its duties in investigating the

allegation of the perpetration of fraud. Lastly, the 2nd Respondent deposed that applicant is attempting to shield himself from criminal investigation and prosecution by instigating an action in court with the claim that his fundamental rights are infringed upon.

The 1st and 2nd Respondent supported their affidavit with a written address raising 2 major issues, namely:

ISSUE ONE (1)

Whether the present Application to enforce fundamental right of the Applicant is properly constituted in law?

ISSUE TWO (2)

Whether the present Application to enforce fundamental right of the Applicant indeed establishes any action(s) that violates the Applicant's rights?

ISSUE THREE (3)

Whether the Applicant can use an Application to enforce fundamental rights to shield himself from criminal investigation?

I will have to discard the first issue because the applicant amended the originating process to showcase the right constitution. With regards to the 2nd issue raised, the 1st and 2nd Respondents argued that the invitation and momentary detention of the applicant for 8 hours by the 3rd Respondent does not amount to an infringement of the fundamental rights of the applicant citing the case of FRN v. Ifegwu (2003) 5 SC 252 @ 303 in support of this assertion. With regards to the 3rd issue, the 1st and 2nd Respondent argued that the applicant is trying to shield himself from criminal investigation citing an obita dictum in the

case of ***AG ANAMBRA STATE V UBA (2005) 15 NWLR (PT. 947)44.***

The 3rd Respondent filed a counter affidavit on the 24th day of February 2023 deposed by one Owolabi Gbenga an investigating officer of the 3rd Respondent who had the authority to deposed to the affidavit. The 3rd Responded asserted that the affidavit of the applicant is misleading stating that the CEO of Tabitha Eden Ltd – David Ogo Ogaga is a person of interest in the case and they have no information on his whereabouts as claimed by the applicant. The 3rd Respondent admitted to have receive the petition by the Applicant but declined on the grounds that it is a purely civil matter which is outside its scope but accepted the petition of the 1st and 2nd Respondents to investigate the offence of conspiracy, obtaining by false pretence, inducement and fraud perpetrated by the Applicant and Tabitha Eden Ltd. The 3rd Respondent denied detaining the applicant for 8 hours but rather asserted that the Applicant was invited for to throw lights on the allegations levied against him and was subsequently released on administrative bail on the same day. The 3rd Respondent maintained that it was informed by the 1st and 2nd Respondents that the Applicant is in partnership with the said Tabitha Eden Ltd to develop estates and the 1st and 2nd Respondents relying on this representation paid in the sum of N57,600,000.00 into the Applicant's bank account. The 3rd Respondent further asserted that the money paid to the applicant was not remitted to Tabitha Eden Ltd, but rather, the applicant expended the funds on personal expenses.

The 3rd Respondent raised 3 major issues in its written address, namely:-

1. Whether the 3rd Responded has breached the rights of the Applicant
2. Whether the applicant is entitled to the damages claimed and;
3. Whether the Applicant is entitled to the order of perpetual injunction.

In arguing the first issue, the 3rd Respondent maintained that the invitation of the Applicant was in the discharge of its duties as provided by law, specifically in Sections 6 (b) (h), Section 7 (1) (a) and (2) (b) 2 of the Economic and Financial Crimes Commission (Establishment) Act 2004 and such invitation did not amount to the infringement of the personal liberty of the Applicant. With regards to the 2nd issue, the Respondent asserted that the Applicant is not entitled to damages sought as the Applicant failed to show how his rights were infringed upon. In arguing the 3rd issue raised, the 3rd respondent argued that the order of perpetual injunction sought by the applicant is a mere attempt to shield the Applicant from further investigation and prosecution.

The 4th Respondent entered a conditional appearance on the 17th day of June 2021 and also filed a notice of preliminary objections on the grounds that the Applicant has not disclosed any reasonable cause of actions against the 4th respondent. The notice of preliminary objection was supported with a written address and a counter affidavit deposed by one Joshua Robert, a litigation secretary in the legal department of the 4th respondent.

The applicant filed a further affidavit on the 29th day March 2023 wherein the applicant deposed and countered all the facts in the 1st and 2nd respondent affidavit maintaining that all the money paid to the applicant was duly remitted to Tabitha Eden Ltd.

The Applicant also filed a further and better affidavit in reply to the 3rd Respondent counter affidavit maintaining that the monies paid by the 1st and 2nd Respondent was duly remitted to Tabitha Eden Ltd and that the 'invitation' by the 3rd Respondent was a ploy to arrest him (the Applicant) and deny him of his right to liberty.

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 decision:-

1. If the 4th and 5th Respondent can be considered as necessary parties to this suit
2. If the fundamental rights of the Applicant was infringed upon by the respondent and as such if the applicant is entitled to damages
- 3 If the order of perpetual order sought by the Applicant restraining the 1st and 2nd Respondents from further using the 3rd 4th and 5th Respondents Agents to disturb, harass, intimidate or pester the Applicant is well constituted in law.

With regards to the first issue, I painstakingly perused all the affidavits, legal arguments, and exhibits tendered by the parties in this suit to find reference to how the 4th and 5th Respondents can be considered as necessary parties to this suit. The applicant failed to show how the 4th and 5th Respondents infringe on his (the applicant's) fundamental rights. As such, I am forced to uphold the preliminary objections of the 4th and 5th Respondents not being a necessary party to this suit.

In ***N.B.A. V. KEHINDE (2017) 11 NWLR (PT. 1576) 225*** it was held that a necessary party is one who should be bound by the result and the question to be settled. Therefore, there must be a question in the action which cannot be effectually and

completely settled unless he is a party. Relying on this precedent, it quite glaring that the matter between the applicant can be effectually determined without the joinder of the 4th and 5th Respondent. The applicant merely mentioned that the 1st and 2nd Respondents were using the 4th and 5th Respondents to harass him (the applicant) without showing instance of such harassment and how it infringed upon the applicant rights.

With regards the second issue, 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)***

I have carefully considered the facts disclosed in the affidavits of parties as well evidences adduced by the Applicant vide the exhibits attached to her affidavit.

I am of the opinion that an invitation by law enforcement agencies does not amount to the infringement of an individual fundamental rights. In the case of **AMYN INVESTMENT LTD & ORS V. EFCC & ANOR (2020) LPELR-58713(CA)** the court held that a mere invitation by law enforcement agencies does not amount to a breach of fundamental human rights. In fact, the court advised that every citizen has a civil duty to respond to invitations by law enforcement agencies.

"The person invited will honour the invitation and he could go to the office of the Commission either with his Legal Practitioner or alone to find out what the invitation is really about. If it turns out to be a ploy or a design by the complainant to use the Commission or the Police in collection of debts arising from a simple contract or other agreement, then the person invited can tell the officials or 1st Respondent or Police not to interfere."

The 3rd respondent has wide powers which includes the prevention and detection of offences in violation of the provisions of this Act; The arrest and apprehension of economic and financial crime perpetrators; The investigation of assets and properties of persons arrested for committing any offence under this Act. **Section 13 (1) EFCC ACT; KEN NWAFOR V ECONOMIC AND FINANCIAL CRIMES COMMISSION (2021) Legalpedia (CA) 31150**

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 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...”

Going by the petition of the 1st and 2nd Respondents submitted to the 3rd Respondent, it is evident that the 3rd Respondent acted reasonably in inviting the applicant as a suspect. In the same vein, it cannot be said that invitation and arrest of the Applicant is a violation of section 35(1) (C) of the Constitution of Nigeria 1999 (as amended). The said section provides that:-

“35 (1): Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law: –(C), for the purpose of bringing him before a Court in execution of the Order of Court or upon reasonable suspicions of his having committed a Criminal Offence or to such extent as may be reasonably necessary to prevent his committing a Criminal Offence”

However, by Section 35(4) and (5) of the Constitution of Nigeria 1999 (as amended), it is provided thus:-

"35(4): Any person who is arrested or detained in accordance with sub – section 1 (C) of this Section shall be brought before a Court of Law within a reasonable time....

35(5): In sub – section 4 of this Section, the expression 'a reasonable time' means – In the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of 40 Kilometres, a period of one day, and In any other case, a period of two days or such longer period as in the circumstances may be considered by the Court to be reasonable"

The Applicant in his affidavit deposed that he was detained for 8 hours. Going by the provision of section 35 of the Constitution of Nigeria 1999 (as amended), it is clear that the Applicant was not detained for longer than necessary and as such cannot claim that his fundamental rights were infringed upon.

Before addressing the 3rd issue, I think it important to find out if the case at hand falls under a civil or criminal issue. It is acknowledged that the Applicant first petitioned the 3rd Respondent on the subject matter of this suit which was declined on the grounds of being a civil issue and thus outside its purview. Thus, it is somewhat contradictory for the 3rd Respondent to accept to investigate the same matter when petitioned by the 1st and 2nd Respondents. I am a bit reluctant to dabble into this knowing it might be within the administrative purview of the 3rd Respondent to choose which matters to investigate. However, going by the facts of this case, it appears that the 1st and 2nd Respondents were defrauded by Tabitha Eden Ltd. The invitation and subsequent arrest of the Applicant by the

3rd Respondent was to determine if the applicant has a hand in defrauding the 1st and 2nd Respondents. Thus, I am not inclined to grant the Applicant's relief of perpetual order restraining the 3rd Respondent from investigating the petition. It will not be right to restrain the 1st and 2nd Respondents from pursuing all lawful avenues in recovering a said sum of which they were allegedly defrauded.

In summary, the Applicant's suit is hereby dismissed.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Dian N Nkwap:- For the 3rd Respondent

JUSTINA A. Adeniyi:- Appearing with A. P Omotolu For the
Applicant

O. Marx Ikongbeh:-Appearing with Chucks Okafor for the 1st and
2nd Respondent