

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA - ABUJA
ON MONDAY THE 9TH OCTOBER, 2023.**

SUIT NO: FCT/HC/GWD/CV/21/2022

**IN THE MATTER OF AN APPLICATION FOR THE ENFORCEMENT OF
FUNDAMENTAL RIGHTS.**

BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI

BETWEEN

MR. RAYMOND OJIH.....APPLICANT

AND

1. ALH. YAKUBU MOHAMMED

2. ACP.NANA

3. (Police Area Commander, Gwagwalada)

4. COMMISSIONER OF POLICE(FCT COMMAND)

}....RESPONDENTS

JUDGMENT

This is a suit commenced by originating Motion for enforcement of fundamental right of **MR. RAYMOND OJIH** of Nigeria Correctional Service, Kuje – Abuja. The application is brought pursuant to Order II Rules 1, 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, and sections 46(3), 34 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 337(1) of the Administration of Criminal Justice Act 2015 and under the

inherent jurisdiction of the Honourable Court dated and filed the 11th March, 2022. Reliefs sought are:

1. **A Declaration** that the plans, efforts and actions of the Respondents to arrest, detain, embarrass, harass and humiliate the Applicant in respect of his transaction with 1st Respondent is unlawful, illegal and contrary to law.
2. **A Declaration** that the seizure and detention of the Applicant's car by the Respondent since on the 07/03/22 without due legal process is unlawful illegal and contrary to law.
3. **A Declaration** that the Applicant has not committed any criminal offence known to law in his dealing with the 1st Respondent and that it is not within the statutory powers/duties of the 2nd and 3rd Respondents and her office to recover money for the 1st Respondent.
4. **An Order of Perpetual Injunction** restraining the Respondents, their servants, agents and privies from arresting, detaining, harassing or embarrassing the Applicant in connection with his transaction with the 1st Respondent contained herein or in any other guise.
5. **An Order** of court directing the immediate release of the Applicant's Toyota Corolla car by the Respondents.
6. **General Damages** of Ten Million Naira (N10, 000, 000.00) only for hostage taking of the Applicant by the 1st Respondent and his gang along Shehedi-Abattoir Road near Couch Peter's house, Kuje-Abuja.

7. **Another Ten Million Naira (N10, 000, 000)** only damages for unlawful seizure and detention of Applicant's Toyota Corolla vehicle, with Registration number Abuja-YAB 259 NP by the Respondents since on the 07/03/22 till date without legal due process.
8. **Such Other or Further Orders** as this Honourable Court may deem fit to make in the circumstances of this case.

In compliance with order 2 of the rules of the fundamental rights (Enforcement Procedure) Rules 2009, the applicant supported the application with statement of facts setting out the name and description of the applicant, reliefs sought and the grounds upon which the reliefs are sought. The applicant also supported the application with Affidavit of 34 paragraphs deposed to by the applicant himself dated 11/03/2022 and a written address. Annexed to the application are three (3) unmarked exhibits. Upon receipt of the 1st respondent's counter affidavit in opposition to the applicant's application, the applicant filed a 7 paragraph of further affidavit deposed to by the applicant, dated and filed the 14/10/22, annexed with Exhibits R2, R3 and an additional written address.

On being served with the originating process and in reaction to same, the 1st Respondent filed a counter affidavit of 36 paragraphs with three annexure – exhibits A, B and C. In the course of adumbration, A.I Aliyu Esq who appears with H.S.Yahaya Esq for the 1st respondent contended that the further affidavit filed by the applicant offends the provision of order 2 rule 7 of the Fundamental

Right Enforcement Rules 2009 which provide for 5 clear days within which a process of this nature should be filed. In the instant case, that the respondent counter affidavit was filed 22/09/22 while the further and better affidavit of the applicant was filed on 14/10/22, a period more than 15 days and that there is no leave to extend time in line with order 2 rule 7. Based on this, the court is urged not to rely on facts in the further affidavit.

The 1st respondent reacting to the main application submitted that the applicant failed to link the 1st respondent to any breach of his right. Instead, that he has conceded via exhibit R3 attached to the further affidavit that the police in carrying out their duty impounded his car, the reason he is requesting the police to release his vehicle on bond and not the 1st respondent. The 1st respondent alleged that granting prayers 1, 3 and 4 of the applicant would mean the court will be making an order stopping the police from carrying out their statutory duties of investigating crime and urged the court to dismiss the suit to enable the police conclude their investigation.

Issue formulated and argued on by the 1st respondent in his written address is:

Whether in the circumstances, the Applicant is entitled to the grant of the reliefs sought by the Applicant in his application. In arguing the issue, the learned counsel I.A. Aliyu on behalf of the 1st respondent reemphasized the already established principle of law that for a party to succeed in an application for the enforcement of his

fundamental rights, the alleged breach must come under any of the rights recognized under Chapter 4 of the Constitution and under the African Charter on Human and Peoples Right. He submitted that the applicant in this case did not show that the cause of action which formed the basis of his filing this suit comes under any of the Rights protected under the constitution. Cited **WAEC V. ADEYANJO (2008)9 NWLR (PT. 1092) 270** and **WAEC V. AKINKUMI (2008)9 NWLR (Pt.1091) 151**. In the later case, the holding of the Supreme Court is reproduced as follows:

“...the settled principle is that in ascertaining the justiciability or competence of a suit commenced by way of an application under the fundamental rights (Enforcement Procedure Rules), the Court must ensure that the enforcement of the Fundamental Rights is the main claim and not the ancillary claim”.

The 1st respondent alleged that the applicant's cause of action did not come under any of the rights envisaged under chapter 4 of the Constitutions of the Federal Republic of Nigeria, 1999 as amended, more so, that the court should not be used as a tool to prevent or stop any investigation into an offence committed by any citizen. Cited section 31 of the Police Act 2020, **IGP & Anor v. UBA & Ors (2014)11 CLRN** and **Attorney General of Anambra State v. Chief Chris UBA (2005) 15 NWLR (PT.947)44**, wherein the Court per **Bulkachuwa JCA** held: **“...For a person, therefore to go to court to be shielded against criminal investigation and prosecution is an**

interference with powers given by the Constitution to Law Officers in the control of criminal investigation. The plaintiff has no legally recognizable right to which the court can come to his aid. His claim is not one the court can take cognizance of for it has disclosed no cause of action. The Plaintiff cannot expect a judicial fiat preventing a law officer in the exercise of his constitutional power.”

It is opined that the police did not restrain the movement of the applicant but that he was only invited to answer to the allegation being investigated that he bluntly refused to honour the invitation instead, ran to this court seeking restraining order against the police from carrying out its duties. It went further to state that the pendency of this suit has brought the investigation of the case to a complete halt. Similarly, contrary to the deposition of the applicant in paragraphs 26, 29 and 32 of the affidavit in support that the respondent impounded his car, the 1st respondent in paragraph 1.13 of his written address claimed that the applicant's vehicle was released on bond to him and that he was never detained for even a day to warrant any breach of the rights of the applicant. In view of the above facts I am urged to dismiss the case of the applicant for lack of merit and award substantial cost against the Applicant.

The applicant on his own part formulates three issues for the determination of the court as follows:

- 1. Whether the plans, efforts, actions and/or threat by the Respondents to arrest, detain and or further detain the**

Applicant indefinitely at the behest of the 1st respondent without due legal process to compel, pressurize and/or intimidate the Applicant to succumb to the use of force by the Respondent to recover money for 1st Respondent can be justified in law?

- 2. Whether the seizure and continued detention of the Applicant's Toyota Corolla Car by the Respondents as a bait to arrest and detain him indefinitely without due legal process to compel Applicant to pay money to 1st Respondent can be justified in law?**
- 3. Whether the act of self help and hostage taken by the 1st Respondent against the Applicant and his three little children can be justified in law?**

Before I go into resolving the issues as formulated by the parties and reproduced above, I considered it apt to state that the record of the court reveals that the 2nd and 3rd respondents despite service of the originating processes on them followed by hearing notices for every proceedings of the court on this case, they never appeared in person or by legal representation nor filed any process. The 1st respondent while adumbrating contended that the further and better affidavit filed by the applicant offends the provision of order 2 rule 7 of the Fundamental Right Enforcement Rules 2009 which provide for 5 clear days within which a process of this nature should be file. The basis of his contention is that the respondent's counter affidavit was filed 22/09/22 while the further and better affidavit of

the applicant was filed on 14/10/22, a period more than 15 days and that there is no leave to extend time in line with order 2 rule 7. This argument as I said earlier was raised at the point of adumbration and the applicant never responded to it. Considering that it is an issue of law, I will briefly address it.

For proper appreciation of the relevant rules in this regard, I restate hereunder thus:

Order 2 rule 6: Where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit.

Rule 7: The applicant may on being served with the Respondent's written address, file and serve an address on points of law within 5 days of being served, and may accompany it with a further affidavit.

Fundamental Rights Enforcement procedure Rules 2009 did not make provision for extension of time. However, where there is non compliance with the requirement as to time, the rules regard it as an irregularity that may not nullify such proceedings. See Order IX (9) Rule 1 of the FREP. It is therefore my considered opinion and I so hold that the complaint of the respondent against the applicant further affidavit as to the requirement of time is cured order 9 rule 1 of the Fundamental Rights Enforcement Rules.

In order to resolve or address the issue of the alleged breach of applicant's fundamental rights by the respondents, I adopt the

three issues formulated by the applicant but before then I considered it pertinent to briefly set out the facts of the case. It is alleged that sometimes in 2019, the 1st respondent approached the applicant, a public servant with Nigeria Correctional Service, Kuje to assist him secure jobs with the Nigeria Correctional Service, which the applicant claimed he turned down initially but due to pressure from the 1st respondent, he contacted one Mr. Isah Umar of the Ministry of Interior, Abuja who undertook to secure jobs for the 1st respondent on payment of some money, and that he rely his contact with Mr. Isah Umar and the demand for money to secure the jobs to the 1st respondent who consented to it. The court is not told at this point how much money was paid by the 1st respondent. Nevertheless, it is in evidence that when the jobs was not forth coming, the 1st respondent reported the matter against the applicant at the Gwagwalada Area Command in 2020. It is also alleged by the applicant that the 1st respondent had threatened to deploy all his connections to deal with him unless he pays him back his money. In line with the threat, that he has received excessive pressure and threat from the IPO Solomon to pay the money being claimed by the 1st respondent, in alternative to enter undertaking on how to pay the money else he should be ready for indefinite incarceration. It is also the case of the applicant that on the 7th March, 2022 at about 0645hrs going for school run with his children, when suddenly he was double crossed and blocked by a car with a green Voxwegan Vento No: PRESIDENCY – NYCN 438 with four hefty and dangerous looking men inside the car who jumped down and surrounded him

and his children inside the car at Shedadi-Abattoir junction near Coach Peter's House Kuje Abuja. That he and the children were traumatized by the action of the 1st respondent and his thugs who insisted despite plea from passers-by who were attracted to the scene created by the 1st respondents and his thug to take him to undisclosed place. But that eventually at the heat of argument between the 1st respondent and his thugs and the intervener, he escaped from the scene after having been held hostage for over 5 and half hours.

ISSUE ONE: Whether the plans, efforts, actions and/or threat by the Respondents to arrest, detain and or further detain the Applicant indefinitely at the behest of the 1st respondent without due legal process to compel, pressurize and/or intimidate the Applicant to succumb to the use of force by the Respondent to recover money for 1st Respondent can be justified in law?

Section 46 of the constitution vested on this Court the power to hear and determine an alleged or likely breach of fundamental rights. The applicant has therefore come before this court alleging the breach of his right under section 34 and 41 of the Constitution of the Federal Republic of Nigeria as amended and section 337(1) of Administration of Criminal Justice Act 2015. The sections state as follow:

Section 34(1): Every individual is entitled to respect for the dignity of his person, and accordingly:-

- (a) No person shall be subjected to torture or to inhuman or degrading treatment.
- (b) No person shall be held in slavery or servitude; and
- (c) No person shall be required to perform forced or compulsory labour.

(2): For the purposes of subsection (1)(c) of this section, 'forced or compulsory labour' does not include:-

- (a) Any labour required in consequence of the sentence or order of a court;
- (b) Any labour required of members of the armed forces of the Federation or the Nigeria, Police Force in pursuance of their duties as such;
- (c).....
- (d).....

Section 41(1): Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exist therefrom.

Subsection (2): Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

- (a) Imposing restriction on the residence of movement of any person who has committed or is reasonably respected to have committed a criminal offence in order to prevent him from leaving Nigeria;
- (b)

Section 337(1) of ACJA:

“The seizure by the police of property taken during arrest or investigation under this Act, or alleged or suspected to have been stolen or found in circumstances which create a suspicion of the commission of an offence, shall, within a period not exceeding 48 hours of the taking of the property or thing, be reported to a court, and the court shall make an order in respect of the disposal of the property or its delivery to the person entitled to its possession or such other orders as it may deem fit in the circumstances.”

It has long been established that he who assert must prove. See **NBC PLC v. Olarewaju (2006) LPELR-7696(CA) and sections 131, 132 and 133 of the Evidence Act.** In the instance, case, the applicant having alleged the breach of his fundamental rights against the respondents, he has the duty in line with the above principle of law to prove same. The question of infringement of fundamental rights is basically a question of facts. It is the facts of the matter as disclosed in the processes filed that are examined, analyzed and evaluated, to see if the fundamental rights of the Applicant were violated or dealt with in a manner that is contrary to the constitution and other

provisions on the fundamental rights of an individual. See *ONAH vs. OKENWA* (2010) 7 NWLR (PT 1194) 512 at 535-536 and *ONWUAMADIKE vs. IGP* (2018) LPELR (46039) 1 at 20-22.

I have carefully gone through the affidavit in support as well as the further affidavit of the applicant in this case, and found that the applicant did not link the 2nd and 3rd respondents to the alleged holding of him and his children hostage for five and a half hours at Shedadi-Abattoir junction, Kuje Abuja. The allegation was basically against the 1st respondent and his proclaimed thugs. The applicant even spoke highly of the 2nd respondent whom he alleged advised him (the applicant) to join him to prosecute Mr. Isah Umar for allegedly defrauding the 1st respondent.

The only time the applicant clearly mentioned the involvement of the 2nd and the 3rd respondents in his evidence is when he traced his car to the 2nd and 3rd respondents' office after he was told by his wife that the 1st respondent towed the car away as well as when he alleged that the IPO officer Solomon following the threat of the 1st respondent put him under pressure and threat to pay back the 1st respondent money or else he will be incarcerated indefinitely. The 1st respondent denied all these averments of the applicant in his counter affidavit. In all of this, there is no evidence showing that the applicant was arrested and detained by the 2nd and 3rd respondents thereby restricting his freedom of movement under section 41 of the Constitution and I am unable to find any evidence of torture or inhuman or degrading

treatment visited on the applicant by the 2nd and 3rd respondent. On that note, I resolved issue one in favour of the 2nd and 3rd respondent.

For the 1st respondent, the applicant had alleged in paragraphs 13, 17, 19, 20 and 21 how the respondent threatened him and eventually carried out his threat when he held him and his children hostage for over 5 hours after double crossed and blocked him with a Green Voxwegan with Registration Number Presidency- NYCN 438 while he was driving his children to school in the early hour of the morning on 7th March, 2022 at Shedadi –Abattoir junction, Kuje Abuja. To substantiate his allegation, the applicant attached two photograph showing two cars, one is ash colour said to belong to him with Reg. No: YAB259NP while the green colour car was brought by the 1st respondent and his thugs. Though, that he later escaped but his car was towed to the office of the 2nd and 3rd respondents by the 1st respondent. The above statement of the respondent completely exonerated the 2nd and 3rd respondent as nothing was said linking them to his alleged hostage taken. However, the averments are denied in paragraphs 11, 17, 19 and 20 of the 1st respondent's counter affidavit which is that when the applicant refused to show up at the station after consistent called by phone, his bail was revoked and a team of police officers were dispatched to arrest the applicant on the 7th March, 2022, and that he followed them to act as a pointer. That as soon as the applicant realized that they are police he quickly abandoned his car with no child/children inside as

claimed and ran into the bush; and that it was the police that towed his car to the Area Command Police Station for safety and as exhibit. The 1st respondent did not support his evidence with any prove to show that it was indeed the police that flagged down the applicant and he was with them to act as a pointer. Which van or vehicle were the police driving to flagged down the applicant? Of the two vehicle presented in photograph by the applicant none can be described as police vehicle. I am therefore not persuaded by the evidence of the 1st respondent that it was the police that flagged down the applicant. This takes me to issue two:

ISSUE TWO: Whether the seizure and continued detention of the Applicant's Toyota Corolla Car by the Respondents as a bait to arrest and detain him indefinitely without due legal process to compel Applicant to pay money to 1st Respondent can be justified in law?

The applicant had claimed that the 2nd and 3rd respondents had continued to detain his car till date. To dispute or discredit that averment, the 1st respondent attached exhibit C to his counter affidavit. Exhibit C is a bond to produce wherein the applicant filled and his Car No. YAB – 259NP was released to him on the bond on the 8/04/22. The law is settled that documentary evidence speak for itself. It therefore follows that Exhibit C being a document speaks for itself. See **Ayorinde v. Kuforiji (2022) LPELR-56600(SC)**. In view of the clear content of exhibit C, I am unable to agree with the applicant that his car remains in the custody of the respondents. This issue is resolved in favour of the respondents.

ISSUE THREE: Whether the act of self help and hostage taken by the 1st Respondent against the Applicant and his three little children can be justified in law? No law allows self help, hence the answer to this issue is in the negative. The evidence, of the respondent in support of hostage taken of him and his children he claimed it was done by the 1st respondent and his thugs. The applicant's wife according to the averment took pictures of the two vehicles at the scene of the crime and even confirmed to the husband that the husband's car is being towed by the 1st respondent but she failed to capture in the photographs the people at the scene of the crime to give the court a better view of who were those involved. I am not persuaded by the evidence of the 1st respondent that he and the children were held hostage for hours by the 1st respondent and his thugs. This issue is resolved in favour of the respondents.

I must not fail to address the claim of the applicant that he has not committed any criminal offence known to law in his dealing with 1st respondent and that it is not within the statutory duties of the 2nd and 3rd respondents to recover money for the respondent. I entirely agree that the police's duty do not include recovery of debt. The question is what transaction is the applicant referring to? The applicant a public officer with the Nigeria correctional service had accepted money from the 1st respondent to secure a job for him. It is immaterial whether he was directly involved in securing the job or a third party he brought into picture. The action of the applicant is an offence under section 18(b) of the Corrupt Practices and other

related offences Act 2000. He who comes to equity must come with a clean hand. The applicant having act contrary to the tenant of the law will not run to the same law to seek for protection. More so, the facts of this case, even though the applicant had coughed the reliefs in a manner to suggest fundamental breach is not a case under the purview of the Chapter Four of the Constitution of the Federal Republic of Nigeria.

In view of the aforementioned, I hold that the applicant's case failed and so he is not entitled to reliefs sought. Accordingly, application for enforcement of fundamental rights filed by the applicant on the 11/03/22 is refused and is hereby dismissed on no case.

The registry is ordered to make the CTC of this judgment available to the parties within 7 days from today.

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HON. JUSTICE A.I. AKOBI
09/10/2023

APPEARANCE:

Anayo Okereke for the Applicant
I. A. Aliyu appearing with A. Husaini for the Respondent